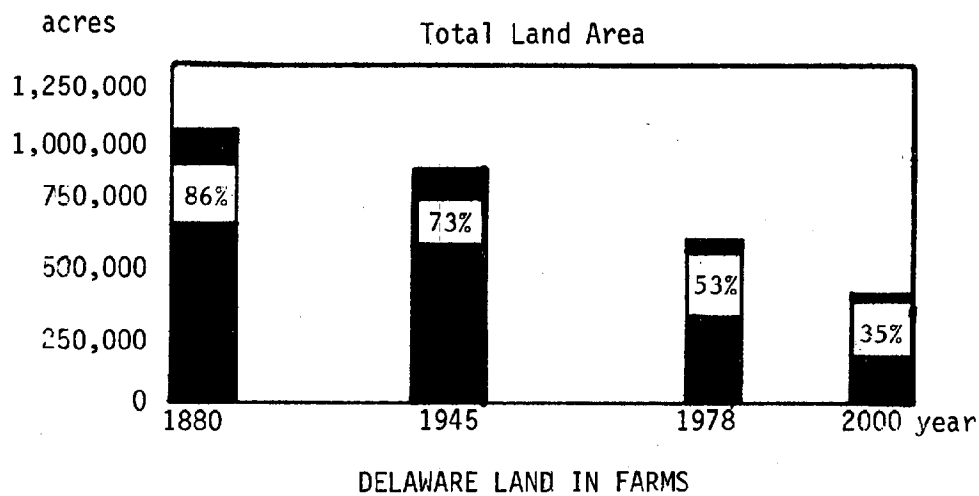


re. Coastal Zone Management Program w.p.

PRESERVING DELAWARE FARMLAND FINAL REPORT



CZIC COLLECTION

REPORT AND RECOMMENDATIONS
OF THE
GOVERNOR'S ADVISORY COMMITTEE ON FARMLAND PRESERVATION
JANUARY 15, 1981

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PRESERVING DELAWARE'S FARMLAND

Final Report

of the

Governor's Advisory Committee

on

Farmland Preservation

to

The Honorable Pierre S. du Pont, IV

Governor of the State of Delaware

January, 1981

U.S. DEPARTMENT OF COMMERCE NOAA
COASTAL SERVICES CENTER
2234 SOUTH HOBSON AVENUE
CHARLESTON, SC 29405-2413

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PREFACE

"Particularly crucial is the need to protect and preserve Delaware farmland to insure a continued agricultural industry, adequate food supply, and open space. Prime farmland also protects water recharge, provides a relief from urban sprawl and maintains an important aspect of our national heritage. Agriculture is Delaware's largest industry, and we all share its benefits."

The Hon. Pierre S. du Pont, IV
Governor of Delaware

"Delaware has a high level of land devoted to agriculture; and, with the nation's food needs increasing, the favorable location of Delaware's agricultural industry should permit it to continue to make a major contribution to the State's economy."

"Now as in the past, the agricultural sector is the largest single user of land in Delaware and the population at large shares in the benefits."

"DELAWARE SHOULD PRESERVE AND PROTECT ITS PRIME FARMLAND INCLUDING LANDS CLASSIFIED AS I, II AND III, AND INCLUDING PRODUCTIVE RECLAIMED FARMLANDS."

DELAWARE TOMORROW COMMISSION

"The time has come to systematically and objectively assess the problem of loss of productive land, judge its impact on our future as a nation, and decide collectively how best to deal with the situation . . . The decision will be an emotional one because, like it or not, discussions will have to revolve around private ownership of land, which is the cornerstone of our agricultural system . . . If we agree that prime farmland should not leave agriculture, there should be a way, or ways, to equitably handle that principle."

Donald F. Crossan
Dean, College of Agricultural
Sciences,
University of Delaware

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INTRODUCTION

Delaware citizens face a crucial period in land use policy. Many factors support the conclusion that the State's loss of farmland threatens to reach crisis proportions in the next decade or two.

Delaware agriculture is part of the national and world economy, also. The United States at present has not run out of farmland and can provide abundant food and fiber for our people plus sizeable exports, but there is an increasing concern regarding America's agricultural capacity after the year 2000. Agricultural land preservation, or lack of it, is a major factor in this concern. How long can the loss of productive farmland continue without serious consequences?

The size of an adequate agricultural base depends not only upon our own needs but also upon the level of exports that is needed nationally. Agricultural commodities are vital to maintaining a positive U. S. balance of payments. A high level of agricultural exports may be necessary rather than just desirable. Production from nearly one-third of America's cropland is now exported, up from one-seventh in 1950 and one-fourth in 1970. Sustaining such a level could be difficult at the current rate of cropland loss.

When planning the use of this resource that provides our food supply and is a mainstay of our state and national economy, it seems wise to look far ahead even a century not merely a decade or two. All citizens should share the responsibility for wise land use decisions affecting agriculture.

According to the U. S. Department of Agriculture, American farmers are now producing crops on about 367 million acres of cropland, which is close to the upper limit of cropland readily available (385 million acres, excluding land used for pasture). About 2.7 million acres are lost annually to urbanization; to new or expanded public facilities, parks, recreation, wildlife and nature preserves; and to abandonments of unprofitable land. Offsetting this loss is 1.3 million acres added through irrigation, drainage, clearing, and development of dryland farming. So, we face an annual net loss of 1.4 million acres nationally.

Loss of farmland is more critical in the highly-urbanized Northeast than in other parts of the country. Northeastern states are in a situation where they are dependent on distant areas for the majority of their food needs. Also, the rate of increase in agricultural productivity has slowed more in the Northeast than nationally.

In Delaware, land in farms was 672,000 acres in 1978 (compared with 923,000 in 1945), including 495,000 - 500,000 acres of harvested cropland. Loss has been most evident in New Castle County where over two-thirds of the land urbanized through 1974 was prime farmland. From 1949 through 1974, within the memory of many adult Delawareans, land in farms declined 43 percent in New Castle County, 29 percent in Kent County, and 14 percent in Sussex County. More intensive farming of the remaining acres kept the decline of actual harvested cropland at 11 percent in New Castle County, and resulted in increases of nine percent in Kent County and 30 percent in Sussex County. (For detailed explanation see Section A.) Any further increases in harvested cropland nationally and in Delaware would involve the use of more marginal land, requiring sizeable additional financial investment and a longer time period before realizing tangible returns.

Some imminent constraints upon agriculture which should be considered in assessing the need to save farmland include:

- higher energy costs
- increased costs of other production inputs
- restricted water availability
- environmental restrictions
- less research and improvement in agricultural technology
- continued conversion of productive land to nonagricultural use
- volatile export demands
- unpredictability of markets due to governmental interference
- unfavorable weather

REASONS FOR FARMLAND PRESERVATION

Economic Development:

In a primitive economy agriculture provides necessities for survival. Once self-sufficiency is achieved, trade is possible. In many underdeveloped parts of the world, agriculture has yet to reach a minimum level of self-sufficiency. In more advanced economies, abundant agricultural production allows development of other enterprises and employment of people off the farm. As agricultural production improves, economies of scale in production, processing, and distribution tend to hold down costs of food and fiber.

On a more regional scale, or state scale as in Delaware, farmland preservation is important as a source of direct and indirect employment. Direct farm employment has decreased greatly due to increased technology. These technological advances create new jobs in the manufacture of equipment and agrichemicals, and in storage, processing, packaging, marketing, and finance. Higher productivity allows more use of farm products for non-food purposes, two present examples being fuel alcohol and high quality lubricants.

Importance of Agriculture to Delaware:

Agriculture is first and foremost a stabilizing influence on the economy. It is not affected by the same business cycles, labor strikes, etc., that manufacturing and other sectors experience. Also, in Delaware's small economy, agriculture's high "multiplier effects" contribute importantly to other sectors of the economy and to maintaining diversity.

In employment and income, Delaware's agricultural industry is a leader. Employing nearly 30,000 workers in agricultural supply, production, processing, and wholesale and retail distribution, agribusiness rivals the chemical industry as the State's leading private employer, with over 11 percent of our work force. Just the processing of food and related products employs 8,000 workers with an annual payroll of \$80 million. The value of shipments of food and kindred products in Delaware totals over \$850 million, which compares with \$1,054 million for the chemicals sector.

Our Agricultural Advantages:

Delaware agriculture has a definite comparative advantage over other north-eastern states in producing commodities such as broilers and the corn-soybean feed supply for these broilers. Delaware's location is ideal, being both close to the vast consumer markets of the Northeast and situated along major transportation corridors. Our cropland is fertile, level, and well drained, with farm units of sufficient size to permit efficient use of modern machinery and equipment. It is noteworthy that good quality farmland (SCS Classes I & III) makes up a higher portion of Delaware's land area than occurs in an agricultural heartland state such as Iowa. Moderate climate permits double cropping and even triple cropping. Water requirements are generally well-met from rainfall and supplemental irrigation, although conflicts over water use are expected to increase. The State's air quality is relatively high and poses few pollution problems to farm products.

Delaware also produces milk, eggs, fruits and vegetables, potatoes, hogs, greenhouse and nursery products, and other commodities. Delaware could produce larger quantities and be more competitive in some of these if it were profitable enough to do so.

Preserving farmland does not imply that only farms, farm suppliers, food processors, and related agribusiness firms should be permitted in rural areas. While agribusiness may be the best type of development in some of Delaware's rural areas, many other types of business establishments are necessary in a well-balanced rural economy.

Energy:

Other broad benefits, particularly near urban areas, are related to energy conservation. Transportation represents a very significant part of the final cost of farm products. As farms near urban areas are lost, prices increase as a function of energy consumed for transportation.

Scattered, rural nonfarm development (urban sprawl) also increases farming energy costs. Operators of smaller, separated plots cannot use larger, more efficient equipment; more fuel is needed to move equipment from site to site; and duplication of fixed equipment is necessary. Routine maintenance and surveillance is also more costly. Energy costs for nonfarm rural residents is higher than in concentrated development areas. Such residents must make longer trips in order to meet their needs, and delivery of services to them is more expensive. Hence, preservation of farmland in large blocks, and concentration of nonfarm uses into urbanized areas, could result in considerable energy savings.

Public Services:

Agricultural areas require few public services and facilities. At the same time, tax revenues (property, and income) on a per farm basis, and possibly per capita basis, exceed the cost of serving such areas. This is not the case with suburban sprawl. In recent years several new sewer projects servicing scattered residential areas have capital cost of \$15,000 - \$18,000 per household. These costs, along with associated other requirements for

public services and exclusive of annual maintenance costs, greatly exceed the tax revenues generated by such dwellings. Hence, local governments gain more than they expend when farmlands are preserved in large concentrations.

Other Purposes:

The scenic value of farmlands has long been recognized in recreation and tourism programs, and this value may be more widely felt by the general public than any other. It clearly has been a factor in many decisions to locate residences in rural areas. Other recreation values include use (with some restrictions imposed by property owners) for hunting, walking, and bicycling.

Farmlands also provide for recharge of groundwater systems, particularly as compared to the impervious surfaces of streets, parking lots, and rooftops. Farmland management practices typically have a much more beneficial impact upon the environment than scattered nonfarm uses which cannot be properly serviced with utilities. Certain crops have a beneficial impact on soils by adding nutrients and helping to reduce erosion and run-off problems. Farm areas provide cleaner air due to the photosynthetic process of green plants.

Finally, farming as an American cultural element is often a major thrust of preservation programs. Although only a small percentage of the population still has a direct connection with a working farm, many more have roots to an earlier generation reared on a farm. Still others have been instilled with the country's colonial history or with their family's heritage in another country. While these values are not easily quantified, preserving our agricultural heritage remains an important reason for farmland preservation.

CREATION OF THE GOVERNOR'S ADVISORY COMMITTEE ON FARMLAND PRESERVATION

On March 12, 1980, Governor du Pont issued Executive Order No. 84 creating an Advisory Committee on Farmland Preservation. This executive order and the members of the committee appointed by him are given in the appendix to this report. This report is organized into sections corresponding to the six tasks assigned the Committee in the Governor's order, as follows:

- A. MAGNITUDE OF LOSS OF DELAWARE FARMLAND AND REASONABLE PROJECTIONS OF ANTICIPATED LOSSES.
- B. THOSE FARMLAND AREAS WHERE POTENTIAL FOR LOSS OF FARMLAND IS PARTICULARLY ACUTE.
- C. CAUSES FOR LOSS OF FARMLAND.
- D. ESTIMATE OF DELAWARE'S NEED TO PRESERVE FARMLAND.
- E. FEDERAL, STATE AND LOCAL STATUTES OR ADMINISTRATIVE RULES AND REGULATIONS AFFECTING THE LOSS OF FARMLAND.
- F. PROPOSED LEGISLATIVE OR ADMINISTRATIVE ACTION DESIGNED TO REDUCE LOSS OF DELAWARE FARMLAND AND ESTIMATED FISCAL IMPACT OF SUCH PROPOSALS.

SECTION A

MAGNITUDE OF LOSS OF DELAWARE FARMLAND AND REASONABLE PROJECTIONS OF ANTICIPATED LOSSES

HISTORY AND BACKGROUND

Delaware contains 1,268,000 acres of land. Land in farms was apparently at its peak around 1880, with 1,090,000 acres or 86 percent of total land area. By 1978 land in farms had fallen to 672,000 acres, or 53 percent of total land area, a loss of over 400,000 acres from 1880 - 1978. (The above data comes from the U. S. Censuses of Agriculture for Delaware.)

In the early days Delaware farms contained extensive woodland and marsh areas that were part of yesteryear farm operations but were not cultivated. Today over 200,000 acres, or more than half, of Delaware's woodland is not on farms. Similarly, most of the 112,000 acres of Delaware marshlands are not on farms. Approximately 60,000 acres of this nonfarm woodland and marsh are in wildlife refuges, state forests, and parks.

By the 1920's much land originally cleared had been abandoned and had reverted to woodland. The Nation's agricultural economy, which had been struggling throughout the 1920's, hit bottom during the Depression. Delaware land in farms fell to 895,000 acres by 1940, and harvested cropland dropped more sharply to 378,000 acres. Never again did the amount of harvested cropland fall this low.

World War II caused an increase in farm land. Next, large-scale land clearing and drainage brought some woodland back into crops, about 20,000 acres in Sussex County alone during 1954 - 1968. As corn and soybean production increased, pasture land declined by nearly 65,000 acres.

Cropland lost has been replaceable so far, even as land in farms has shown a precipitous drop. Clearing and drainage of woodland has enabled farmers to reach a modern high of 495,000 - 500,000 acres of harvested cropland. However, there is a limit to how much woodland we can or should attempt to convert to crop production. Soil, topography, air quality, and value of timber must be considered. More intensive farming of remaining acres has also limited the decline.

Loss of farmland has been most evident in New Castle County. As of 1974, urban, transportation, national defense, and state institutional uses covered 130,000 acres of Delaware land. About 67,000 acres of this development were in New Castle County, where the Greater Wilmington and Greater Newark areas converge. Over two-thirds of the land urbanized through 1974 in New Castle County was prime farmland.

	<u>Delaware</u> <u>Land in Farms</u>	<u>% of Total Land Area</u>	<u>Harvested Cropland</u>
1880	1,090,000	86%	-----
1940	895,000	71%	378,000
1945	923,000	73%	416,000
1974	655,000	52%	452,000
1978	672,000	53%	495,000 - 500,000

Percent Change in County Farmland, 1949 - 1974

	<u>Land in Farms</u>	<u>Harvested Cropland</u>
New Castle	-43%	-11%
Kent	-29%	+09%
Sussex	-14%	+30%

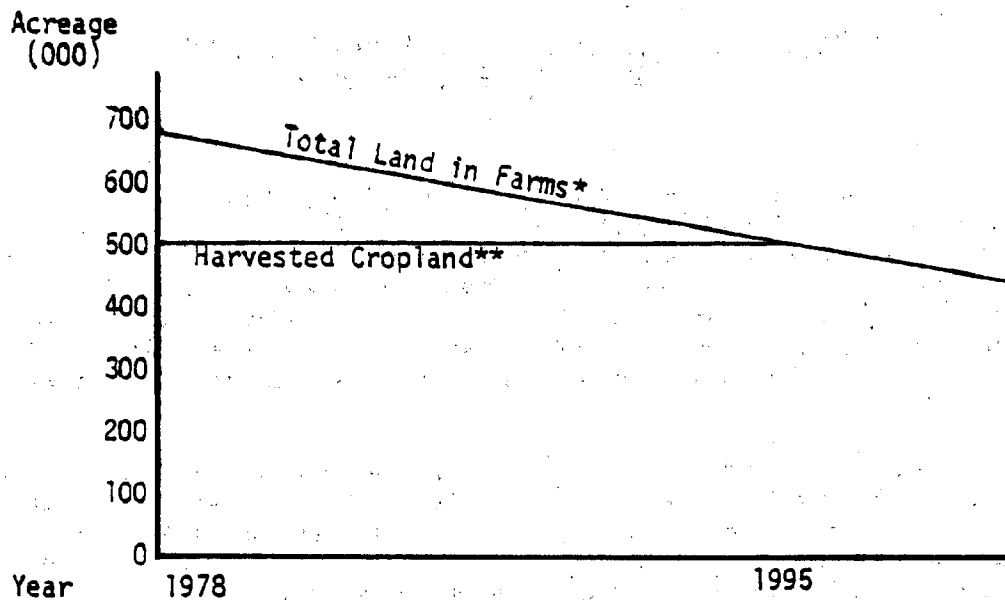
PRESENT SITUATION AND PROJECTIONS

The 1978 Census of Agriculture in Delaware seemed to show an increase in land in farms, rather than the expected decrease since 1974. However, the 1978 and 1974 published totals should not be directly compared, according to the U. S. Bureau of the Census. Certain adjustments need to be made. The result after adjusting is that in Delaware, the 1974 - 1978 increase in land in farms is so small as to mean no appreciable change. Other data and observation of farmland conversion tend to confirm that in the late 1970's our farmland acreage remained about constant. Unusual economic factors slowed urban development of farmland.

The long-term trend in Delaware's farmland acreage has been downward. From the end of World War II through 1974, the loss was 9,000 - 10,000 acres per year. When the economy returns to normal, a long-term trend toward a 10,000 acre yearly loss may resume. For the Committee's task of predicting future Delaware farmland acreage without preservation measures, the 1945 - 1974 rate of loss may be a more reasonable projection than the unusual 1974 - 1978 situation.

Today's agricultural economy in Delaware relies on production from almost 500,000 acres of harvested cropland. If this acreage is reduced much below that level, the State's agricultural economy, and its overall economy, will suffer.

If it is desirable to keep Delaware's harvested cropland from falling below a minimum of 500,000 acres, little more than 170,000 acres can be lost from the current 672,000 acres of land in farms. Assuming that Delaware's long-term loss rate approaches 10,000 acres per year, those 170,000 acres could be lost in just 17 years from 1978, or by about 1995. This loss may occur sooner, as farmland converted to urban development is more likely to be cropland than woodland or pasture.



*Decreasing at long-term rate of 10,000 acres yearly.

**Present acreage.

In the year 2000 only 450,000 acres, or 35 percent of total land area, would remain as land in farms if the long-term trend continues unabated. Will Delaware's people let this happen?

SECTION B

THOSE FARMLAND AREAS WHERE THE POTENTIAL FOR LOSS OF FARMLAND IS PARTICULARLY ACUTE

UNIVERSITY OF DELAWARE LAND MANAGEMENT SURVEY

The Committee has been asked to determine specific areas where farmland loss is likely to occur. On the demand side, population and economic pressures are greater in certain areas. On the supply side, land is more readily available in areas where farmland owners are not committed to a future of commercial farming and are holding land in anticipation of development opportunities.

What do we know about the thinking of Delaware farm owners with respect to selling their land for development? Do any data exist that enable direct comparisons from one area of the state to another? Yes, in 1979 a land ownership research project headed by Dr. Gerald Cole of the University of Delaware's College of Agricultural Sciences surveyed 178 owners of family farms in Delaware.

The most pertinent survey findings are shown in Appendix A to this report. In various ways they confirm that long-term commercial agriculture has a definite future in Delaware, but they also indicate that especially in New Castle County, the prospect for land shifting out of farming is considerable even in the next five years.

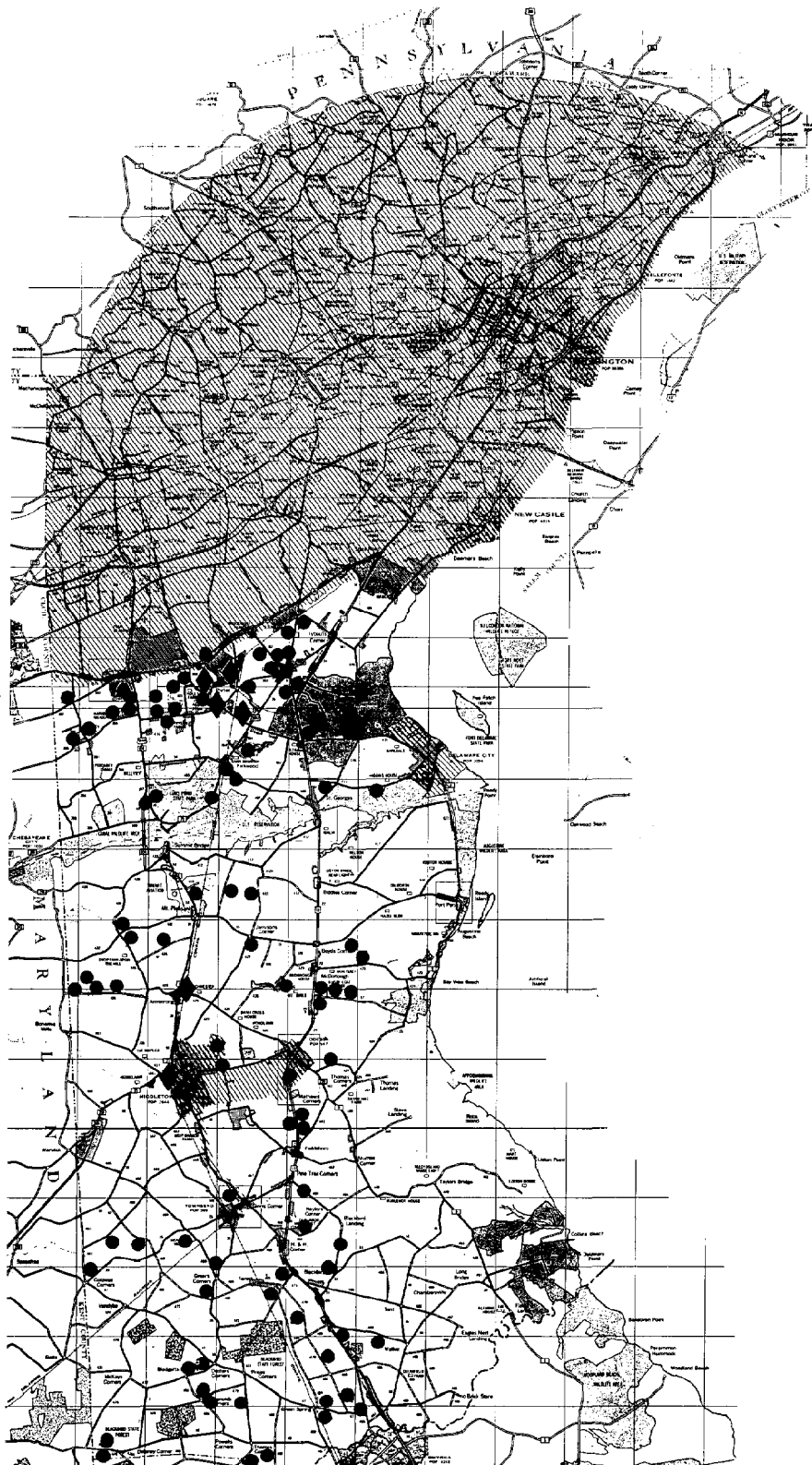
Development Trends in Each County

As part of the Committee's review of the scope of farmland loss, maps of recent rural development patterns were prepared. These maps are reproduced below.

Rural Development Patterns - New Castle County

Information collected and mapped by New Castle County's Department of Planning indicates significant residential subdivision activity north of the Chesapeake and Delaware Canal as well as the potential for a large amount of scattered rural development in the southern portion of the County. This potential results from previously approved subdivisions and a pattern of recent transfers of large farmland tracts to non-farm owners. Many previously approved subdivisions below the Canal are undeveloped at the present time, some being farmed under lease which inflates the reported farmland acreage and makes the problem less visible. Subdivision activity appears to bear little direct relationship to planned sewer facilities, increasing the potential long-term adverse impact on farming. Recent (preliminary) census figures indicate a continued movement of population from older developed areas, particularly the City of Wilmington, to suburban areas even though the County's total population grew only slightly during the 1970's.

RURAL DEVELOPMENT PATTERNS IN NEW CASTLE COUNTY



CURRENT ZONING - JAN., 1980

AGRICULTURAL-GENERAL PURPOSE(R-2)

ALL OTHER DISTRICTS

SEWER SERVICE DISTRICTS

EXISTING DEVELOPMENT - 1968

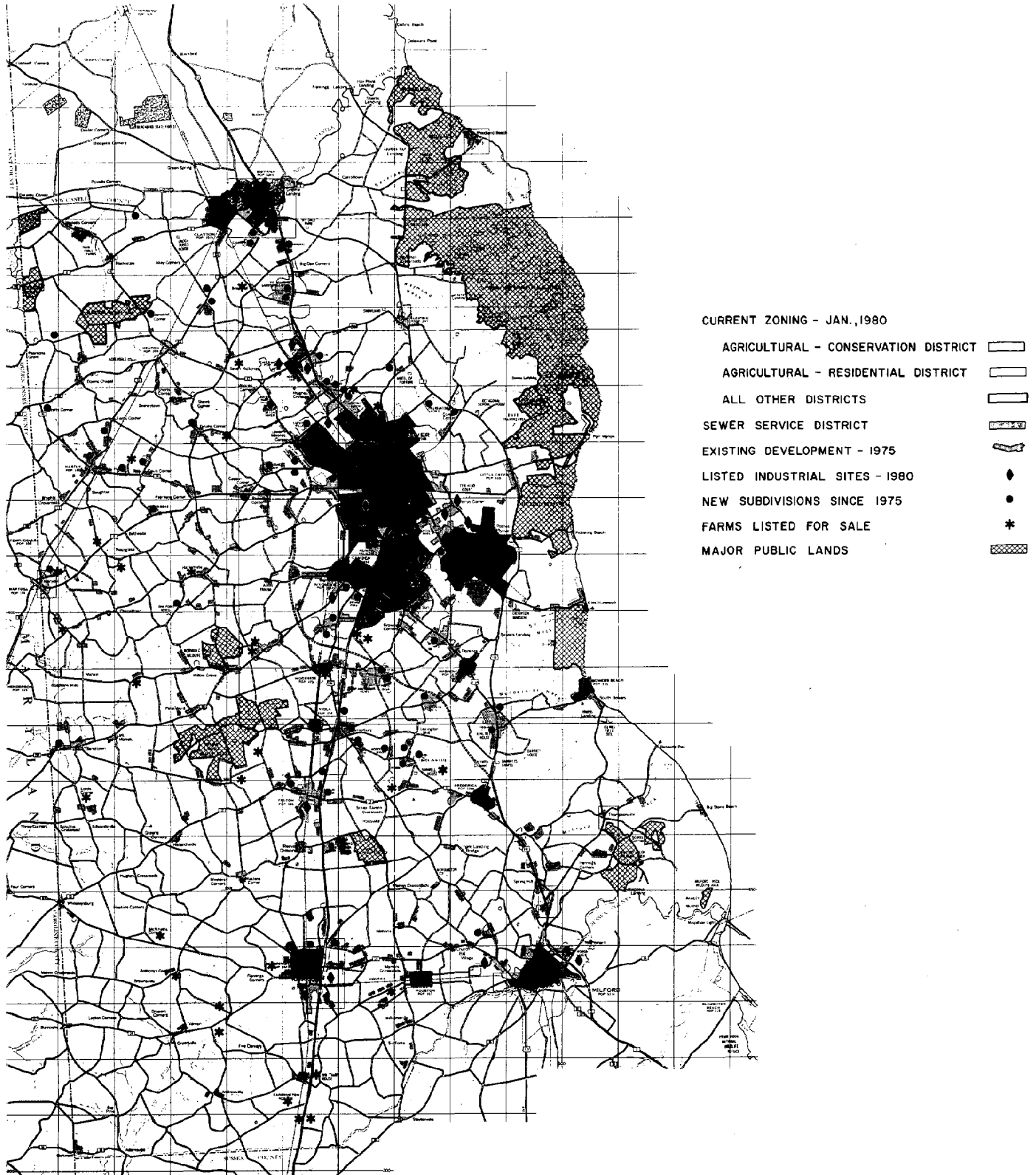
LISTED INDUSTRIAL SITES - 1980

NEW SUBDIVISIONS SINCE 1975*

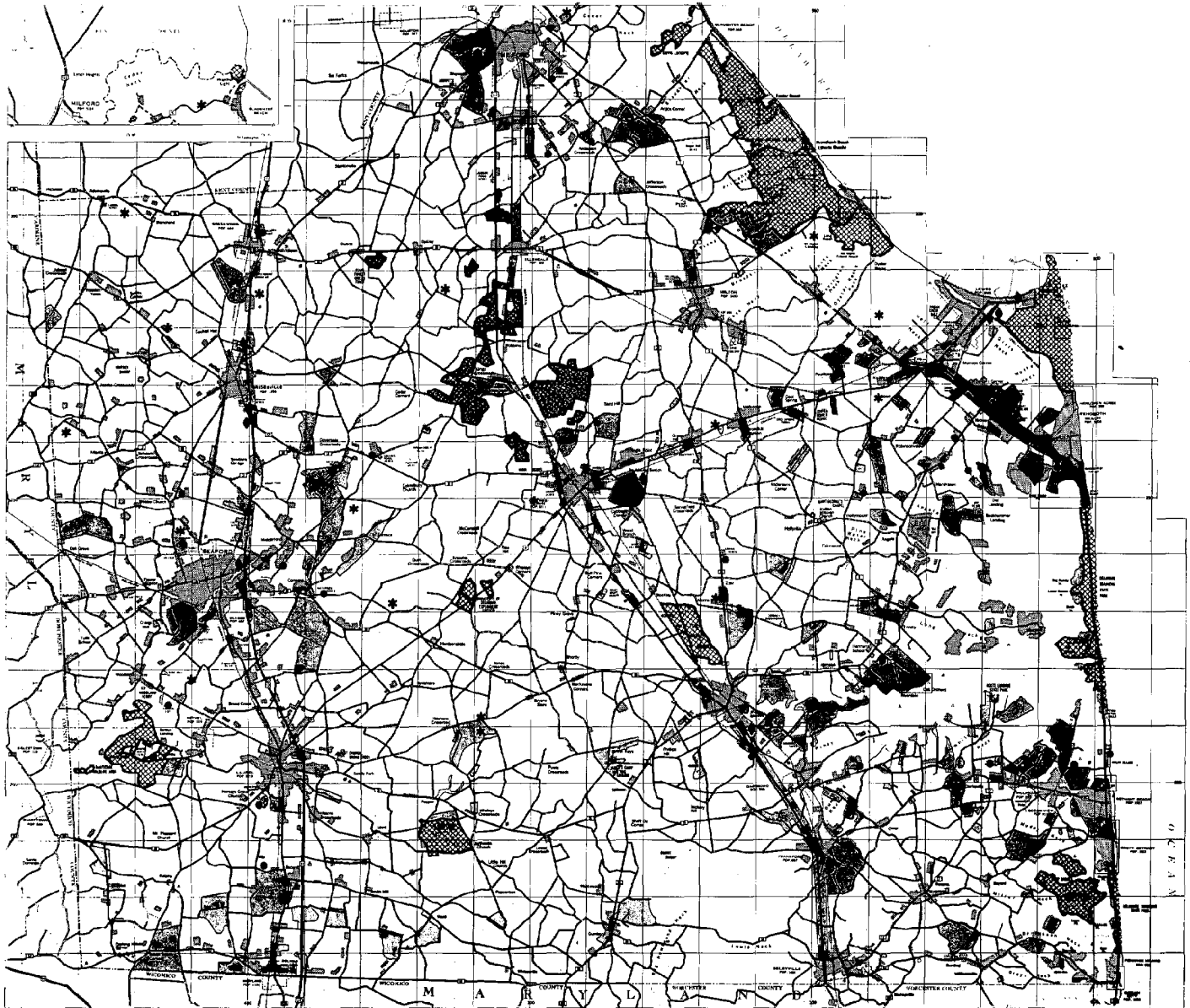
MAJOR PUBLIC LANDS

*DOES NOT SHOW PARCELS WHICH CONTAIN LESS THAN 6 DWELLING UNITS, OR PARCELS WHICH ARE GREATER THAN 5 ACRES IN AREA AND ONLY CONTAIN 1 DWELLING UNIT. (RESIDENTIAL & INDUSTRIAL SUBDIVISIONS)

RURAL DEVELOPMENT PATTERNS IN KENT COUNTY



RURAL DEVELOPMENT PATTERNS IN SUSSEX COUNTY



CURRENT ZONING - JULY, 1978
 AGRICULTURAL DISTRICT
 ALL OTHER DISTRICTS
 EXISTING DEVELOPMENT - 1975



LISTED INDUSTRIAL SITES - 1980
 NEW SUBDIVISIONS SINCE 1977
 FARMS LISTED FOR SALE
 MAJOR PUBLIC LANDS



Rural Development Patterns - Kent County

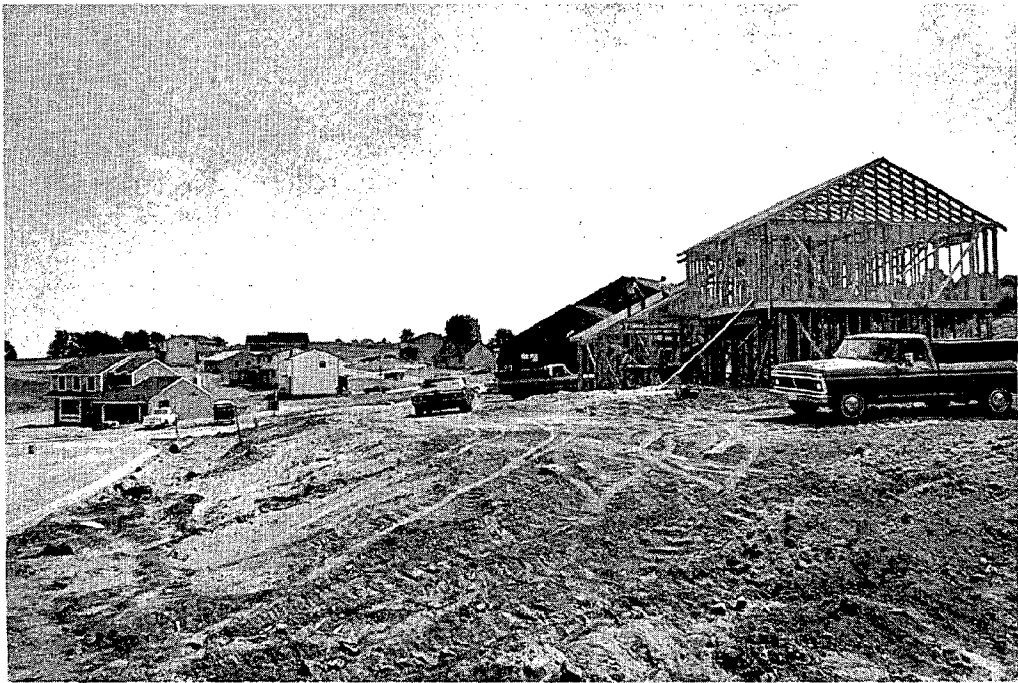
Kent County has experienced a continued growth in population over the last twenty years, much of it reflected in suburban and rural development. In areas near the major municipalities or included in sewer service districts, most growth has occurred in "larger subdivision" form. In more rural areas the new growth has tended to be in road front or strip development or as relatively small subdivisions (5 - 15 houses). Few rural roads in the County have escaped some strip development. In this County a close relationship can be observed between small rural subdivision location and recent changes in ownership or farms listed for sale. Recent (preliminary) census figures indicate that during the 1970's, almost 60 percent of the County's increase in population occurred outside of incorporated municipalities.

Rural Development Patterns - Sussex County

A development pattern similar to Kent County's is observed in Sussex County. Strip development along rural roads and smaller rural subdivisions prevail, although the relationship between this development and farmland sales is less well established in this County. A number of larger subdivisions in very rural portions of the County have also been approved. Development activity has been intense in the coastal areas, particularly in areas adjacent to or near major coastal highways. In the more rural areas of the County, development activity seemed to have no relationship to existing or planned sewer or other public facilities. Recent (preliminary) census figures indicate that almost all of Sussex County's population growth since 1970 and as much as 80 percent of non-coastal portions occurred outside of incorporated places.

CONCLUSIONS

These many scattered subdivisions all over the State may have a future impact on farming even greater than their acreage would suggest. For example, proposed regulation of pesticide use in some parts of the United States could essentially prohibit pesticide spraying within a quarter-mile of houses, schools, or other concentrations of people. Such regulation could substantially hamper farming operations in areas with scattered residential subdivisions.



SECTION C

CAUSES FOR LOSS OF FARMLAND

DEVELOPMENT STIMULATED BY GOVERNMENT DECISIONS

Federal, State, and local government spending on roads, water and sewer systems, housing and other community services and facilities in rural areas, both directly and indirectly leads to conversion of farmland to other uses in Delaware. Government spending on infrastructure doesn't just encourage rural land speculation by developers . . . it guarantees such speculation.

Government spending decisions are seen as instrumental in converting farmland to other uses. The Delaware Correctional Center at Smyrna, the Stanton Campus of Delaware Technical and Community College, and the new housing for Dover Air Force Base on previously farmed lands are examples of such decisions. Also, proposals for new highways, such as the West Dover By-Pass, reflect the lower costs of construction through farms versus alternatives in built-up areas, but not potential costs resulting from direct loss of farmlands or indirect losses from induced development. Local decisions on sewer service districts and extensions contribute greatly to suburban development and increased speculation in land, both of which adversely impact farming. Even though the various public mortgage money programs in Delaware often finance purchase of existing homes rather than new constructions, these programs work against farmland preservation to the extent that any new construction is financed.

Some encouraging signs are seen in that road construction now is at a low level and the Farmers Home Administration is financing fewer homes in rural areas. The State of Delaware's capital spending is being steadily reduced as a means of reducing the State's disproportionately large capital debt. Furthermore, the report of the Delaware Tomorrow Commission, essentially calling for future urban development to be located where infrastructure already is in place, has been adopted as the State's development plan. The Coastal Management Program incorporates this philosophy. Preserving agricultural areas against suburban development prevents the further abandonment and decay of central cities.

Residential demand for land seems to be the chief nonfarm influence on farm real estate values in Delaware, as strip developments and subdivisions compete against other uses. Scattered rural residential development was identified as a major problem in the work done by OMBP for the Committee. In many cases this occurs as individual lots and dwellings fronting on public roads, and not part of a recorded subdivision. County and local ordinances typically exempt small subdivisions (three lots or less) of land from regulation, particularly if no new streets are constructed. These scattered uses often represent selling-off of frontage lots by farmland owners. Sometimes the process is a chain of events in which one large parcel is subdivided into smaller parcels, perhaps to other family members and still farmed, followed by eventual division of these secondary parcels into yet smaller pieces followed by further rural residential development.

Zoning and subdivision approval have committed acreages of farmland to urban development far in excess of projected urban growth. This inflates Delaware farmland values on the periphery of such areas as well as within.

The opportunity to sell farmland for nonfarm uses at high prices entices many farmers to do so. This not only takes farmland out of production but also makes it expensive for farmers to buy land needed for expansion to efficient farm size.

With farmland values escalating at 15 - 17 percent per year, plus unprecedented interest rates and the failure of net farm income to keep pace with inflation, it becomes steadily less possible to buy land and pay for it from farm income. A price of \$2,000 per acre is too high for the profitable growing of corn and soybeans on much of Delaware's cropland.

Delaware farmers needing more land, who have a high equity in their farms, low interest costs, and adequate machinery, sometimes have found they can pay up to \$2,000 or \$2,500 an acre for additional acreage and realize a modest return on labor and management. It may be that farmers themselves are partly responsible for bidding up land values through their expansion efforts.

Many owners of farmland tracts see land as a good investment and are not willing to sell for prices within the farmer's reach. But such owners are often willing to lease or rent farmland. By 1974 leased or rented land comprised 256,000 acres or 41 percent of all land farmed in Delaware.

The gross cash rent for cropland rented in Delaware averaged almost \$52 per acre as of March 1, 1980. This was the highest rent level in the Northeast.

At current land values and interest rates, leasing or renting often is the only way young farmers can get a start and small farmers can expand. But this raises concerns about long-term stewardship of Delaware's soil and water resources. Do either farmland owners hoping to sell soon for urban development, or tenant farmers wanting the highest return each year, apply sound soil and water conservation practices to protect the quality of the land for future production? Soil and water conservation usually reduces current income in exchange for assuring long-term soil productivity.

THE HESITANCE TO CONTINUE FARMING

Uncertainty over the future timing and path of urban development hinders Delaware farmers who want to keep farming. Unsure about whether they may give up agriculture by choice or necessity, farmers next to urbanization hesitate to invest in building improvements, machinery and equipment, soil and water conservation measures, and other expensive capital outlays for which the economic return is long-term. In many cases deferring such expenditures results in an inefficient and badly neglected farm, with premature idling of cropland. Over and over again, farmers assert: "If only I could be certain this area will stay in agriculture for the next 30 years, I'd make these investments and keep farming."

Of 9,000 - 10,000 acres of Delaware farmland lost yearly during 1945 - 1974, only an average of 2,000 acres went directly into urban development. The other 7,000 - 8,000 acres were idled. For every acre actually converted to urban use, an estimated one acre and a half is taken out of production for speculative purposes.

Much farmland was idled because the land had become uneconomical to farm, such as where steep slopes or small fields did not permit efficient use of modern farm machinery, or where poor drainage kept crop yields low. Some farmland was idled in anticipation of speculative sale for urban development, and other farmland was idled due to the difficulties of farming land adjacent to urban neighbors.

Farming in the midst of urbanization has drawbacks. The Delaware farmer may be troubled by vandalism, trespass, and/or the hazards of taking machinery and livestock across rural roads now receiving urban traffic loads. He may have been subjected to lawsuits by suburban neighbors who object to his farm's odors, dust, sprays, noises, etc., even though he was there first. This mix of incompatible land uses further interferes with the stability of farming near urban development. And farmers everywhere are burdened by the proliferation of environmental, health, safety and other regulations.

Reducing such uncertainty and burdens to maintain a stable agricultural area is a key objective of farmland preservation policies and programs. However, it probably can't be achieved without strong incentives to overcome the hesitance to continue farming.

For instance, farm real estate taxes (including school taxes) are once again considered troublesome to Delaware farmers. Property taxes historically have been low in Delaware, because relatively more public services are provided by the State than by local government, and the services are financed by income and other non-property taxes. When farm real estate taxes became an undue burden in the 1960s, the State Farmland Assessment Act of 1968 lessened the impact.

Changes in conditions during the late 1970s have made the Farmland Assessment Act less helpful than previously. It may have outlived its usefulness and need to be supplemented.

Yet if a farmer's property taxes are reduced to zero, that action alone won't do more than delay the day when he sells out to the big offer from a developer. Even if the farmer has to pay a "rollback" of deferred property taxes, it just becomes part of the land price to the developer who in turn passes it on to the home-buyer or other consumer.

A farmland preservation program wisely provides property tax relief within a framework of long-term agricultural preservation plans and approaches, and it strongly encourages exclusive agricultural zoning. There is basic wisdom in building a package of incentives that encourages and supports a system of exclusive agricultural zoning acceptable to Delawareans. More will be discussed about this in Sections E and F.

Simply finding ways to keep a farm in the family from one generation to the next also is a critical need in Delaware. Estate and inheritance taxes based on development values of farmland may make sale of the farm necessary to pay these taxes. However, these taxes need not be an insurmountable problem. There are a number of ways, through wise estate management, to accommodate the taxes and still keep a farm in the family.

The Committee consulted with a tax attorney who specializes in farm estate settlement to learn either the federal estate tax or Delaware inheritance tax imposes such a burden on Delaware farm families as to force farms to be sold for development. There are significant changes in the federal estate tax, under the Tax Reform Act of 1976, intended to ease that burden ... most particularly the opportunities for taxation at agricultural rather than development value of farmland.

With wise estate planning, the farm family which seriously intends to keep the farm in the family can use the provisions of the Tax Reform Act of 1976, trusts, and other mechanisms to do so. The tax attorney said that estate and inheritance taxes alone would rarely cause a forced sale, but when a farm family already was deeply in debt the death taxes could surely be a burden.

However, Delaware's inheritance tax has no deferred payment period and any extension must be sought and obtained on a year-to-year basis. This uncertainty, and the 12 percent yearly interest, imposes a hardship in some cases.

Other taxes, including the State Income Tax, capital gains tax, and real property transfer tax, all have effects on the potential encouragement or discouragement of farming in Delaware. At present they do not work to the encouragement of farming; hence, the need exists to modify these taxes for this purpose. They can be part of the incentives supporting exclusive agricultural zoning, along with relief from property and inheritance taxes. Similarly, procedures should be devised that will rule out government decisions adversely impacting farms located in exclusive agricultural zones. Public policy alternatives and the Committee's recommendations to curb the causes of farmland loss in Delaware are dealt with at length in Sections E and F.

SECTION D

ESTIMATE OF DELAWARE'S NEED TO PRESERVE FARMLAND

For decades the Northeast, including Delaware, has become more dependent upon food production from other regions of the United States. Self-sufficiency is so low in some northeastern states that over 80 percent of their total food supply is shipped in from other states.

Has the time come for the Northeast to reduce its dependence upon other regions, and to protect itself against further declines in this region's agricultural land supply? There's mounting concern that crop production in western states, largely dependent upon irrigation, cannot sustain past levels of food shipments to the East. Many western states' water sources are being critically depleted.

HOW MUCH LAND IS NEEDED?

Increased food production will not occur unless market forces or governmental economic incentives make it more attractive to Delaware farmers. But if the time comes when greater self-sufficiency is indeed desirable or even essential, how much cropland would Delaware require? Let's make some assumptions about acres required per capita and relate this to Delaware's population now and in the year 2000.

Delaware's crop yields are about the same as U. S. average yields, and Delaware's per capita consumption is assumed to be similar as well. (Even the U. S. is not entirely self-sufficient, of course, importing food and fiber from over 150 countries.) With improved technology the acreage of crops per capita used to meet the needs of the U. S. population has fallen from over 1.50 acres in the 1950's to about 1.02 acres in 1978. (By definition, needed acres per capita excludes the third of America's cropland used for export production.) Harvested acres per capita for 1980 is projected at 1.00 acre, and by 2000 0.85 acre might be attained. These levels will be assumed for Delaware.

Delaware's population is currently about 585,000 and has been projected by the Delaware Population Consortium to reach 759,000 by the year 2000. So, assuming a 1980 rate of 1.00 acre of harvested crops per capita and a rate of 0.85 in 2000, Delaware would require 585,000 harvested crop acres this year and 645,000 acres in 2000 to meet the needs of its own population.

In recent years Delaware has harvested about 510,000 - 515,000 acres of crops yearly, which has come from between 450,000 - 495,000 acres with some double-cropping and triple-cropping. To reach the desired 645,000 acres in 2000 would require a 25 percent increase. That 25 percent increase would mean the harvested base must rise to 619,000 acres.

Delaware's present cropland plus certain pasture, woodland, and other non-cropland with reasonable physical potential for conversion to cropland, total roughly 650,000 acres. A 25 percent expansion of harvested cropland (to 619,000 acres) by the year 2000, while physically possible, could be expected only if economic and governmental factors encourage farming and discourage nonfarm competition for farmland.

The minimum acreage Delaware needs to support viable commercial agriculture also relates to the concept of "critical mass". This refers to the number of farms, acreage in farms, and volume of farm production needed in a given area to support off-farm agribusinesses such as suppliers, service firms, processors, etc. Without these off-farm agribusinesses, it would not be feasible for commercial farming to exist. Certainly, northern New Castle County has had a marked decline in off-farm agribusiness. This suggests that the minimum farmland acreage has been approached or reached in that area.

In Kent, Sussex, and southern New Castle counties where corn and soybeans for broiler feed are the main crops, the size and vitality of the broiler industry throughout the Delmarva Peninsula is the relevant consideration. The integrated companies (hatcheries, feed mills, and processors) that control broiler production also provide most of the production inputs and market the output. So long as the Delmarva Peninsula remains a viable broiler production region, Delaware corn and soybean growers have a good and reliable market. But considering the reverse of that statement, could Delaware's broiler industry continue to be competitive if enough local land were no longer available for nearby production of corn and soybeans?

PRESERVATION NEEDED

Without effective farmland preservation Delaware's ability to keep its almost 500,000 acres of cropland under cultivation will be seriously threatened by 1995, as shown in Section A of this report. With effective farmland preservation, the economics of commercial farming in Delaware would seem to favor further expansion.

This gets back to assuring the profitability of farming in Delaware as the first step toward preserving farmland so that efficient producers can expect reasonable returns on investment and management. This may require greater cooperation with agriculture by State and local governments. Land and water resources for the future, taxation, regulation, and financing are major concerns that public policy can alleviate.

FARMLAND PRESERVATION MEETS OTHER NEEDS

Also, how would agriculture's other contributions to Delaware's quality of life fare without farmland preservation? Near urban areas especially, agricultural land is a vital source of scenic beauty, wildlife habitat, and outdoor recreation, and is perhaps even more vital to water supply and air quality. Farmland situated between and adjacent to housing developments, shopping centers, factories, etc., often provides the welcome relief of a "buffer zone" separating land uses that should not be too close to each other. Some farmland at the edge of urban development would, if preserved, help curtail urban sprawl. For the public to maintain needed open space in parks and preserves would be far more expensive than to keep farming as an active contributor to the economy and a source of taxes as well.

Buyers and sellers of land for farming usually have no need and no way to include values of open space in their economic calculations of what land is worth. As a result, the market cannot be expected to guide farmland into the desirable open space pattern. Government programs to preserve farmland near urban areas based on open space criteria, instead of or in addition to agricultural productivity, might be a solution. Urban society as a whole will have to weigh these benefits against the cost of preserving farmland.

CONCLUSIONS

The 1978 Annual Report of the University of Delaware's College of Agricultural Sciences summarizes the situation this way:

Unquestionably there is a need and place for non-agricultural development. The task is to assure development compatible with agriculture, to the fullest extent possible.

Delaware's public policies and programs regarding land and water resources, taxation, and regulation currently need attention as they affect our agricultural industry. If the people of Delaware agree about the importance of agribusiness in our State, they will take steps to assure that agribusiness continues to provide the abundant food supply, economic benefits, and irreplaceable open space we all desire. Effective support of policies and programs assisting farmers and the entire agricultural industry, as needed, will enable agribusiness to thrive in Delaware.

However, there seems little public awareness that Delaware's agricultural land supply is approaching the point of crisis. Cropland lost from Delaware's farms can no longer be easily replaced, or perhaps replaced at all. Any further loss will significantly handicap the State's agricultural economy. There is now more than enough land partially developed and already plotted for future development to adequately meet projected population growth in all areas of the state through the year 2000.

SECTION E

FEDERAL, STATE AND LOCAL STATUTES OR ADMINISTRATIVE RULES AND REGULATIONS AFFECTING THE LOSS OF FARMLAND

THE FEDERAL GOVERNMENT ROLE

There is increasing interest within the federal government in the need for farmland preservation. A start has been made with policy statements and executive memoranda from the Council on Environmental Quality, U. S. Department of Agriculture, the Environmental Protection Agency and Economic Development Administration. A 1979 statement from the report of the National Conference of State Legislatures/Council on Environmental Quality says,

...But a more thorough, government wide effort to coordinate federal programs and policies is needed ...Many state officials ...were genuinely interested in pursuing a coordinated effort by all levels of government -- federal, state, and local, to compile and exchange information on preservation methods and to begin the task of reviewing present policies and their interrelationships. At the moment, however, in most areas of the nation, such coordination is lacking.

A National Agricultural Lands Study is in progress, co-chaired by the Secretary of Agriculture and Chairman of the Council on Environmental Quality.

STATE AND LOCAL PROGRAMS INCLUDING DELAWARE EFFORTS

Interest in farmland preservation is greatest in urban states where people appreciate the open space and economic contributions of agriculture as much as, or more than, the production of food and fiber. Many approaches are in operation or under consideration. Thus far, most seem to be successful only in slowing the loss of farmland.

DELAWARE

In addition to the State Farmland Assessment Act of 1968 mentioned in Section C, Delaware has one program in place ... Conservation Easements. The Governor also recently signed Senate bill 490 that frees normal and pre existing farm operations, in general, from nuisance suits.

There are some economic initiatives in Delaware to help strengthen the agricultural economy. These include: (1) the recent tax credit for new investment for new business including agriculture; (2) passage of the bill to amend the State's industrial financing program to include commercial and agricultural projects; (3) agricultural development will be receiving increased attention from the State Division of Economic Development.

CONSERVATION EASEMENTS

A Conservation Easement can protect natural or cultural resources. Eligibility for certification of conservation easements meeting State criteria is reviewed by the State Department of Natural Resources and Environmental Control (Technical Services Section).

A farmland owner can donate a conservation easement without any restriction against continuing his normal farm operations, including drainage and other soil conservation practices. The farm owner agrees to restrict development of his land, in return for potential savings on federal income tax, capital gains tax, gift tax, estate tax, and sometimes State and local taxes. The farm owner retains title to the land minus its development rights, and can use the land in any way consistent with the terms of his own individual conservation easement. A reduction in potential land value is the basis for the tax benefits.

The land owner need not include 100% of his land and may donate land in stages for tax purposes. Public access to the land is not required, but optional. Private organizations and State and/or local governments may be the recipients of conservation easements.

COASTAL MANAGEMENT PROGRAM

The Governor's Executive Order No. 61 requires all State agencies to comply with these broadly-stated policies on agricultural lands, with application to the entire area of the State (not merely that regulated "Coastal Zone" area generally along Delaware River and Bay and the Atlantic Ocean):

1. All public and private entities whose actions may substantially affect agricultural lands in Delaware, or the agricultural productivity of such lands, should consider the need to preserve and protect such lands prior to taking such actions, and should preserve and protect agricultural lands whenever practicable.
2. The use of farmlands for non-agricultural purposes should be strenuously discouraged by the Farmers Home Administration and all other public financing programs. Instead, development should be directed to the numerous smaller communities which have adequate in-place public services and facilities, as well as adequate land area to accommodate new development.
3. The development of scattered rural residential settlements should be discouraged as long as there are reasonable alternative locations for such development, such as in or immediately adjacent to existing communities or areas where under-utilized sewer systems, water systems, police and fire facilities, and other community facilities and services are available.

METHODS TO PRESERVE PRIME FARMLAND

Farmland preservation experience throughout the United States is a mixture of successes and failures. Whatever approach(es) Delaware takes, the State must feel its way along on this. Reasonable and equitable approaches to farmland preservation are what we seek.

In other places, when beginning efforts have failed, succeeding programs tend to be more expensive, more restrictive, or in other ways become a heavier burden on society. It may be a burden that must be borne if people want to eat three meals a day, but it becomes heavier nonetheless. To the extent that Delaware's first efforts can be made to work as effectively and as long as possible, the day is delayed when more costly, restrictive, and otherwise burdensome programs become necessary.

A number of states and localities have devised methods to retain productive agricultural land. Direct methods include market intervention through development rights, and regulatory measures of exclusive agricultural zoning and development permit systems. Indirect methods are: (1) Tax concessions including property tax differential assessment, federal estate tax, and circuit breakers (graduated tax relief); (2) tax deterrents such as Vermont's capital gains tax; and (3) agricultural districts. Following are brief explanations of each method, adapted from Conserving the Nation's Farmland, Northeast - Midwest Institute, May 1979.

Purchase of Development Rights. A public body purchases development rights for a parcel of farmland. The owner continues to hold the deed to the land and farm it, but nonfarm development is prohibited.

Exclusive Agricultural Zoning. Areas are zoned so that uses not directly related to farming are restricted.

Development Permit Systems. Government approval must be granted for certain types of development.

Property Tax Differential Assessment. There are three types of differential assessment laws in which farmland is assessed at its agricultural use value rather than its market value.

1. Preferential Assessment--Farmland is assessed at its agricultural value, but since there are no restrictions speculators may take advantage of the tax break by minimal farming practices on the land.
2. Deferred Taxation--Penalties are imposed if a farmer develops land that has been assessed at its agricultural value.
3. Restrictive Agreements--A formal agreement is made between a farmer and the state to keep land in agricultural production for an agreed-upon period of time. In return, the State taxes the land at its agricultural value. Stiff penalties are imposed if a farmer breaks the pledge.

Federal Estate Tax. The 1976 Tax Reform Act permits federal estate taxes to be based on farm-use value rather than market value.

Circuit Breakers. Tax credits are provided for farmers whose taxes exceed a certain percentage of their income. To qualify, a farmer must agree to keep his land in agricultural production for a specified period of time.

Capital Gains Tax. The tax is intended to discourage speculation, by taxing much of the profit realized by the short term owner.

Agricultural Districts. The districts are typically composed of a minimum number of acres and combine farm and non-farmland. The farmland is taxed at its current use rate, and states and localities are required to review regulations that would hinder farming practices.

A Transfer of Development Rights plan is under consideration or being tried in a number of states. The concept of transfer of development rights is to shift development potential from one area of a community to another from a "preservation zone" to a "transfer zone". Farmland owners in the "preservation zone" would be provided with certificates representing the development rights to their property, which a developer may purchase in order to develop land at a higher density in the "transfer zone" than local zoning regulations would normally allow.

A chart showing state programs presently in force is in the Appendix C.

A package or mix of approaches would seem most effective in view of the differing financial situations and objectives of farmers.

From Preserving America's Farmland--A Goal The Federal Government Should Support, U. S. General Accounting Office, September 1979, comes this advice:

Each of the various methods used by State and local governments in an attempt to curb farmland losses has characteristics that detract from its effectiveness. It seems clear that the following elements need to be present if a program to retain farmland is to be successful.

- The agricultural areas should be geographically defined and preferably correspond to areas containing the most prime farmland.
- Excessive subdivision of such defined areas should be prevented.
- There must be some compensation to the land owners if the value of their land developed for some other purpose exceeds the agricultural value.
- What constitutes agricultural use and prime farmland should be clearly and specifically defined.

SECTION F

RECOMMENDED LEGISLATIVE AND ADMINISTRATIVE ACTIONS

Sections A through E of this report outline the Committee's study of the farmland loss situation in Delaware. After this study the Committee recommends that the items set forth below be formed into a package of administrative and legislative actions, this package to be known as The Delaware Farmland Preservation Program.

POLICY

The Committee concludes that decisions by governmental entities are primary contributors to loss of farmland. This includes approvals of on-site sewage disposal facilities (State and some localities), sewer collection and transmission systems (primarily local with State oversight), solid waste disposal (State and local), highway and other transportation systems and acceptance of rural subdivision streets for State maintenance (State), park and recreation areas (all levels of government), and location of educational, correctional, health care, and other institutional facilities (primarily State). The impact on agriculture is considered in only a few of such decisions. In practice, rural areas are often chosen because farm status minimizes acquisition problems and costs, land clearing, and construction obstacles.

Federal, State and local housing and mortgage financing programs often foster rural development. Again, these programs generally include no formal review or consideration of impact on agriculture or loss of farmland.

Easy access from private properties to sewer transmission systems (even if a pumping station is required) or to major transportation elements leads to suburban and rural development and speculation in land. The Committee recognizes that uncontrolled strip development along major transportation arteries (U.S. 13, 113), which have access cuts as high as 50-70 cuts per mile, impacts not only agriculture but impedes effectiveness of the highway, contributes to decline of traditional downtown business centers, requires additional expense for traffic control and safety measures, and eventually generates the need for re-alignment and/or new roadways. Access limitations would reduce the speculative impact of public facility decisions and encourage more concentrated patterns of development, as called for in the Delaware Tomorrow Commission's report.

The Committee concludes that a legislatively enacted statement of public policy regarding agriculture is essential to the future of farming in Delaware. The Committee recommends the following:

1. LEGISLATION SHOULD REQUIRE THAT PUBLIC AGENCIES FULLY CONSIDER THE IMPACT ON AGRICULTURE OF VARIOUS PUBLIC FACILITY DESIGN AND LOCATION DECISIONS, AND, WHERE FEASIBLE, LIMIT DIRECT ACCESS FROM ADJACENT PROPERTIES TO REGIONAL TRANSPORTATION AND UTILITY SYSTEMS.

2. IT SHALL BE STATE POLICY THAT (A) AGRICULTURAL ACTIVITIES HAVE A PRIMARY RELATIONSHIP TO THE MAINTENANCE OF THE QUALITY OF LIFE AND MAINTAINING A DESIRABLE STANDARD OF LIVING IN DELAWARE; (B) FARMING IS THE HIGHEST PRIORITY USE OF THOSE AREAS BEST SUITED FOR AGRICULTURAL PRODUCTION; (C) PUBLIC ACTIONS WHICH ADVERSELY IMPACT AGRICULTURE SHOULD BE AVOIDED WITHOUT AN AMPLE FINDING OF PUBLIC NEED; AND (D) PRESERVATION OF THE STATE'S FARMLANDS AND WOODLANDS IS CLEARLY IN THE PUBLIC INTEREST.
3. IT SHALL BE STATE POLICY TO CONSERVE, PROTECT AND ENHANCE THE STATE'S AGRICULTURAL ECONOMIC BASE FOR PRODUCTION OF FOOD, FIBER, AND FUEL, AND TO PRESERVE THESE RESOURCES FOR THEIR NATURAL AND ECOLOGICAL VALUES FOR OPEN SPACES, RECREATIONAL USES, WILDLIFE HABITATS, AND AESTHETIC PURPOSES.
4. IT SHALL BE STATE POLICY TO ENCOURAGE THE IMPROVEMENT OF AGRICULTURAL OPERATIONS IN ORDER TO MAINTAIN AGRICULTURE AS A VIABLE INDUSTRY AND AN IMPORTANT CONTRIBUTOR TO DELAWARE'S ECONOMY.

FARMLAND PRESERVATION PROGRAM

The Committee believes that a comprehensive program containing the following elements is necessary to preserve the State's agricultural land base.

Focus

The Committee is concerned by the lack of a State-level focus on the total agricultural situation, and on the status of farmland in Delaware, in particular. The State government has no agency whose responsibility specifically includes farmland preservation. The Department of Agriculture provides market information and is a regulatory body ensuring farm product quality and protecting consumer interests. The Department of Community Affairs and Economic Development's Division of Economic Development primarily encourages the locating of industrial, commercial, and tourist enterprises in the State. The Department of Natural Resources and Environmental Control, among its mandates, is charged with protection of land and water resources.

The Office of Management, Budget and Planning oversees the management of the State's fiscal, human, and physical resources, but OMBP does not have a specific duty to address agricultural concerns such as farmland loss. The Committee believes that this lack of specific responsibility has resulted in the misuse of prime agricultural lands for other public and private purposes.

1. THE COMMITTEE RECOMMENDS THAT THE OFFICE OF MANAGEMENT, BUDGET AND PLANNING (OMBP) BE ASSIGNED RESPONSIBILITY FOR AGRICULTURAL LANDS CONCERNS. OMBP SHALL BE ASSISTED BY A STATE AGRICULTURAL LANDS PRESERVATION BOARD, COMPOSITION OF WHICH SHOULD BE DETERMINED BY THE GOVERNOR IN CONSULTATION WITH THE LEADERSHIP OF THE GENERAL ASSEMBLY.

2. OMBP SHALL ESTABLISH AN AGRICULTURAL LANDS PRESERVATION SECTION WITH ADEQUATE STAFFING TO STUDY ALL RELATED ISSUES AND RECOMMEND TECHNIQUES TO MAINTAIN AGRICULTURE AS AN IMPORTANT AND VIABLE ECONOMIC ACTIVITY, ENSURE THAT AGRICULTURAL LANDS CONCERNS ARE ADEQUATELY CONSIDERED IN GOVERNMENTAL ACTIONS, AND PROMOTE AGRICULTURE AND AGRI-BUSINESS WITH THE SAME PRIORITY AS THE STATE'S PROMOTION OF INDUSTRIAL, RESIDENTIAL, AND COMMERCIAL PROJECTS. THIS SHOULD INCLUDE EXAMINING THE USE OF INNOVATIVE AGRICULTURAL CREDIT SOURCES, SUCH AS TAX-EXEMPT AGRI-BONDS.

Data

The Committee is disturbed by the lack of readily available and reliable data as to development pressures on the State's agricultural lands, and the change of farmlands to non-farm uses and to short-term agricultural use status, and proliferation of non-farm uses in rural areas. OMBP's staff has found that data on land use, subdivision, land ownership, and property listing and transfer information are generally unavailable. These data are produced for the most part at the local level but no program exists for collection and analysis of them.

3. THE COMMITTEE RECOMMENDS THAT OMBP HAVE THE RESPONSIBILITY TO ROUTINELY COLLECT, ANALYZE AND REPORT TO THE GOVERNOR, THE GENERAL ASSEMBLY, AND THE PUBLIC ON THE EXTENT AND LOCATION OF FARMLAND LOSS AND NON-FARM RURAL DEVELOPMENT, CHANGES IN OWNERSHIP PATTERNS (INCLUDING INDIVIDUAL, FOREIGN AND PUBLIC PATTERNS), AND IMPACT OF GOVERNMENTAL PROPOSALS ON FARMING. THE COMMITTEE ALSO RECOMMENDS THAT COUNTY GOVERNMENTS BE REQUIRED TO COLLECT AND SUPPLY NECESSARY DATA TO THE STATE.

Governmental Action - Zoning and Subdivision Processes

The Committee concludes that a new zoning mechanism with incentives acceptable to Delawareans could be the most efficient and effective technique for farmland preservation. Zoning is established and operational throughout the State, and sufficient administrative and legal experience exists to support its use. It benefits from being primarily a local process with flexibility to respond to individual issues and factors.

The Committee determined that zoning, as presently legislated, has not worked effectively in any of Delaware's counties. "Agricultural Zones" have become mere holding zones for future development, and/or low density residential districts. These zones have not been primarily for maintaining agricultural activities.

The Committee has reviewed agricultural districts and zoning techniques utilized in various states. These concepts recognize the priority of prime farmland or forest areas and typically are the basis for eligibility for tax credits or use-value assessments. The Committee recommends, as the basis of Delaware's farmland preservation program, exclusive agricultural zoning plus the following incentives.

(Note: The following recommendations, numbers 4 through 9, reflect the Committee's decisions prior to public meetings held in November. At the public meetings, and in written comments, sufficient concern was expressed to persuade the Committee against pursuing mandatory exclusive zoning at this time. Instead, a voluntary approach now is recommended to determine what such an approach can accomplish in the hope that a mandatory program never becomes necessary).

*4. THE COMMITTEE RECOMMENDS THAT THE STATE GOVERNMENT ESTABLISH EXCLUSIVE AGRICULTURAL ZONING DISTRICTS AND REGULATIONS PROVIDING FOR AGRICULTURAL AND FARM SUPPORT ACTIVITIES AS THE HIGHEST PRIORITY USE. ALL NON-FARM USES, INCLUDING LARGE-LOT RURAL RESIDENCES, WOULD BE TREATED AS EXCEPTIONS OR VARIANCES IN THESE DISTRICTS. DISTRICTS SHOULD BE DELINEATED BY THE OFFICE OF MANAGEMENT, BUDGET, AND PLANNING AND CERTIFIED BY THE STATE AGRICULTURAL LANDS PRESERVATION BOARD AFTER CONSULTATION WITH FARMING, DEVELOPMENT AND OTHER INTERESTS, COORDINATION WITH COUNTY GOVERNMENTS, AND OPPORTUNITY FOR PUBLIC COMMENT. IN DELINEATING AND CERTIFYING SUCH DISTRICTS OMBP AND THE BOARD MUST CONSIDER AT LEAST THE FOLLOWING FACTORS:

- A. SOIL TYPE AS IT RELATES TO USDA/SOIL CONSERVATION SERVICE CLASSIFICATION SYSTEMS;
- B. CURRENT PHYSICAL AND ECONOMIC PRODUCTIVITY OF LAND REGARDLESS OF CLASSIFICATION;
- C. POTENTIAL PRODUCTIVITY OF LAND AS A RESULT OF CLEARING, DRAINAGE OR IRRIGATION;
- D. ACREAGE AVAILABLE IN CONTIGUOUS OWNERSHIPS, INCLUDING LARGE PUBLIC OWNERSHIPS WHICH ARE COMPATIBLE WITH AGRICULTURE;
- E. COUNTY LAND USE AND PUBLIC FACILITY PLANS; AND
- F. NATURE OF SURROUNDING LAND USES.

OMBP AND THE BOARD ALSO SHALL ESTABLISH A DEFINITION OF "AGRICULTURAL AND FARM-SUPPORT USES" WITH CONSIDERATION OF THOSE USES QUALIFYING FOR PREFERENTIAL ASSESSMENT UNDER THE DELAWARE FARMLAND ASSESSMENT ACT.

* See note above

Incentives Available to Farmland Owners in Exclusive Agricultural Zones

- *5. FARM OWNERS IN AN EXCLUSIVE AGRICULTURAL ZONE SHOULD BE EXEMPTED FROM GENERAL PROPERTY, UTILITY, SCHOOL, OR OTHER SERVICE OR DISTRICT TAXES OR ASSESSMENTS THAT DO NOT DIRECTLY BENEFIT AGRICULTURE EXCEPT TO THE EXTENT THAT THE FARM RESIDENCE AND ANY ACCESSORY RESIDENCES ARE TREATED IN THE SAME MANNER AS NEARBY NON-FARM RESIDENCES. THE STATE SHOULD COMPENSATE AFFECTED UNITS OF GOVERNMENT ON A DECLINING SCALE FOR LOST REVENUES FOR UP TO 3 YEARS FOLLOWING IMPLEMENTATION OF THESE EXEMPTIONS.
- *6. DELAWARE'S INHERITANCE TAX SYSTEM, AS IT RELATES TO FARM ESTATES IN EXCLUSIVE AGRICULTURAL ZONES, SHOULD BE REVISED TO INCLUDE DEFERRAL AND INSTALLMENT PAYMENTS CONSISTENT WITH FEDERAL ESTATE TAX PROVISIONS. ADDITIONALLY, THE INHERITANCE TAX RATE SCHEDULES SHOULD BE INDEXED TO REFLECT THE RATE OF INCREASE IN FARMLAND PRICES IN THE STATE.
- *7. A FARMLAND INCOME TAX RELIEF PROGRAM SHOULD BE ESTABLISHED, INCORPORATING A SCHEDULE OF INCOME TAX CREDITS PROPORTIONAL TO THE ACREAGE OF FARMLAND OWNED IN AN EXCLUSIVE AGRICULTURAL ZONE, AND REQUIRING COMPLIANCE WITH APPROVED SOIL AND WATER CONSERVATION PLANS.
- *8. THE STATE CAPITAL GAINS TAX SCHEDULES SHOULD BE REVISED TO ALLOW DEFERRAL OF THE GAIN, SPREADING THE GAIN OVER AN EXTENDED PERIOD, OR AN EXEMPTION OF SOME PORTION OF THE GAIN ENTIRELY WHEN TRANSFERRED FARMLAND IN AN EXCLUSIVE AGRICULTURAL ZONE IS KEPT IN AGRICULTURE. THE REAL PROPERTY TRANSFER TAX SHOULD ALSO BE REVISED TO PLACE A CEILING ON THE AMOUNT OF TAX WHEN TRANSFERRED FARMLAND IN AN EXCLUSIVE AGRICULTURAL ZONE IS KEPT IN AGRICULTURE.

These incentives would be available only in exclusive agricultural zones and in addition to the Farmland Assessment Act which applies to eligible property owners throughout the State.

Farmland owners in exclusive agricultural zones would automatically qualify for tax credits and other incentives without agreements or contracts, but are subject to penalty and rollback of credits received if they remove their property from agricultural use.

Incentives Available to Farmland Owners Outside of Exclusive Agricultural Zones

Farmlands which, because of their nature or adjacent uses, would fall outside of exclusive agricultural zones are still part of the State's agricultural land base. The continued operation of such farms remains important to the total contribution of agriculture to the State's economy and quality of life. Some mechanism should be provided whereby owners of such lands can participate in farmland preservation programs. The Committee recognizes that these farms may eventually be developed, so any such option would be intended to keep such areas in active agriculture as long as possible, if not indefinitely.

* See note on page 25

- *9. FARMLAND OWNERS OUTSIDE OF EXCLUSIVE AGRICULTURAL ZONES SHOULD BE ABLE TO VOLUNTARILY PARTICIPATE IN A FARMLAND PRESERVATION PROGRAM. PARTICIPATION WOULD REQUIRE A FORMAL, BINDING AGREEMENT FOR AT LEAST FIVE YEARS, SUBJECT TO YEARLY RENEWALS, AND PROVIDE THAT THE FARM OWNER WILL RECEIVE INCOME TAX CREDITS BASED ON THE ACREAGE KEPT IN AGRICULTURE. PARTICIPATION SHOULD BE LIMITED TO FARMS WHICH ARE:

- A) WITHIN ESTABLISHED SEWER SERVICE DISTRICTS
- B) WITHIN A MUNICIPAL BOUNDARY
- C) ZONED FOR RESIDENTIAL OR OTHER NON-AGRICULTURAL USES
- D) OTHERWISE CLEARLY SUBJECT TO IMMINENT DEVELOPMENT PRESSURES, AS DETERMINED BY THE AGRICULTURAL LANDS PRESERVATION BOARD.

Penalties and rollback of credits received would be assessed if a farm owner decides to remove his land from agricultural use during the agreement period.

Governmental Actions - Regulation and Restrictions

Many farmers complain about the number and complexity of permits, approvals, and certifications, and delays in issuing permits affecting their operations. Included are such items as building requirements and permits, burning permits, health and safety requirements, zoning requirements and limits on generation of noise, dust, glare, or odor. These restrictions often result from complaint by non-farm residents who are inconvenienced by customary farm operations. The General Assembly recently enacted legislation to reduce the farmer's risk of nuisance suits. The Committee believes other steps are necessary. The Committee recommends:

10. THE OMBP SHALL INVENTORY AND ANALYZE THE REGULATORY STRUCTURE AT THE STATE AND LOCAL LEVEL AND RECOMMEND TO THE GOVERNOR AND THE GENERAL ASSEMBLY LEGISLATION TO CONSOLIDATE, ELIMINATE, AND SIMPLIFY THE SYSTEM OF PERMITS, APPROVALS, AND CERTIFICATIONS APPLICABLE TO AGRICULTURAL OPERATIONS.

The Committee concludes that some farmland loss is the result of excessive rezoning and subdivision approvals. Rezoning of agricultural areas for other uses and the recording of preliminary subdivision plans tend to inflate the price of land beyond its economic value for long-term agriculture. No tax penalties are associated with the rezoning or recording of preliminary subdivision plans, a situation which encourages non-farm ownership of farmlands for speculative purposes.

11. THE COMMITTEE RECOMMENDS THAT COUNTY ZONING, SUBDIVISION, AND PROPERTY TAX CODES BE REVISED TO:

- (A) REQUIRE IMMEDIATE REASSESSMENT OF LANDS ACCORDING TO THE NON-AGRICULTURAL ZONING OR SUBDIVISION CLASSIFICATION REGARDLESS OF PRESENT USE

* See note on page 25

(B) INCORPORATE A TERMINATION PROVISION WHEREBY THE REZONING BECOMES NULL AND VOID AFTER A PRESCRIBED PERIOD, UNLESS THE PROPERTY IS USED FOR THE PURPOSE SPECIFIED

(C) PROVIDE A PROCESS TO VOID SUBDIVISION APPROVALS AFTER SOME PERIOD OR DEGREE OF NON-DEVELOPMENT.

The Committee believes that scattered and generally unregulated residential development in small, road-front subdivisions has led to the farm vs. non-farm conflicts over accepted farm operations, and unplanned extension of utilities, services, and transportation facilities.

12. THE COMMITTEE RECOMMENDS THAT COUNTY SUBDIVISION ORDINANCES BE MODIFIED TO EFFECTIVELY REGULATE SMALL SUBDIVISIONS. SUCH MODIFICATIONS SHOULD SUBJECT ALL SUCH SUBDIVISIONS TO REVIEW REGARDING THEIR IMPACT ON AGRICULTURE AS WELL AS THEIR IMPLICATIONS FOR FUTURE PUBLIC FACILITY REQUIREMENTS.

13. THE COMMITTEE RECOMMENDS A VOLUNTARY PROGRAM INSTEAD OF EXCLUSIVE AGRICULTURAL ZONING AT THIS TIME. THE VOLUNTARY PROGRAM SHOULD ALLOW FARMLAND OWNERS, INDIVIDUALLY OR IN GROUPS, TO PARTICIPATE IN THE FARMLAND PRESERVATION PROGRAM THROUGH FORMAL AGREEMENT WITH THE STATE FOR SPECIFIED TIME PERIODS (MINIMUM PERIOD OF TEN YEARS). PARTICIPATING OWNERS WOULD HAVE AVAILABLE INCENTIVES IN CHART "A" DEPENDING ON THE DURATION AND NATURE OF THE AGREEMENT. FARMLAND OWNERS IN THE PROGRAM WOULD ALSO HAVE AVAILABLE TO THEM A LIMITED PURCHASE OF DEVELOPMENT RIGHTS PROGRAM.

The details of this voluntary approach follow.

Voluntary Program Approach

- * Farmland owners would be able to participate in a Voluntary Farmland Preservation Program as individuals or as a group of contiguous farmland owners forming an Agricultural Preservation District.
- * Farmland owners may enter farmland into the program, with the exception of farmland that is either:
 - within a municipality;
 - zoned for use other than agricultural usage;
 - platted for subdivision; and
 - within approved sewer service area.

- * Farmland owners in the Farmland Preservation Program would also have available to them a limited Purchase of Development Rights Program (after Chart A).
- * Participation by an individual or group would require a formal binding agreement between the farmland owner and the State of Delaware.
- * The landowner would have the choice of participation under a ten (10), fifteen (15), or twenty (20) year term agreement which can be extended (renewed) at any time during the period for a longer term.

AGRICULTURAL PRESERVATION DISTRICTS

Agricultural Preservation Districts would exist in two forms:

1. State Identified Agricultural Preservation Districts

In creating the State identified Agricultural Preservation Districts the State lead agency would delineate these Districts Statewide for certification by the State Agricultural Preservation Board after consultation with farmers, development and other interests, coordination with county governments and opportunity for public comment. In delineating and certifying such districts the State lead agency and the Board must consider at least the following factors:

- A. SOIL TYPE AS IT RELATES TO USDA/SOIL CONSERVATION SERVICE CLASSIFICATION SYSTEMS;
- B. CURRENT PHYSICAL AND ECONOMIC PRODUCTIVITY OF LAND REGARDLESS OF CLASSIFICATION;
- C. POTENTIAL PRODUCTIVITY OF LAND AS A RESULT OF CLEARING, DRAINAGE, OR IRRIGATION;
- D. ACREAGE AVAILABLE IN CONTIGUOUS OWNERSHIPS, INCLUDING LARGE PUBLIC

OWNERSHIPS WHICH ARE COMPATIBLE WITH AGRICULTURE;

- E. COUNTY LAND USE AND PUBLIC FACILITY PLANS; AND
- F. NATURE OF SURROUNDING LAND USES.

The State lead agency and the board also shall establish a definition of "agricultural and farm-support uses" with consideration of those uses qualifying for preferential assessment under the DELAWARE FARMLAND ASSESSMENT ACT.

The State designated districts would encompass those portions of the State in which public (government) actions are to be strictly limited. Except by individual or group participation in voluntary agreements, the State-designated districts would not affect the rights of farm owners.

In these identified districts the State of Delaware and all its subdivisions (including authorities) shall recognize that "agricultural and farm-support uses" are the highest priority use and that these areas are best suited for agricultural production. Within these districts the State of Delaware and all its subdivisions (including authorities) shall:

- refrain from participating in publicly financed programs and other activities that lead directly or indirectly to the conversion of farmland to other uses; and
- direct development from agricultural preservation districts to the numerous communities and areas which have adequate in-place public services and facilities, as well as adequate land area to accommodate new development or redevelopment activities.

The State lead agency and the board also shall establish a definition of "agricultural and farm-support uses" with consideration of those uses qualifying for preferential assessment under the DELAWARE FARMLAND ASSESSMENT ACT.

2. Working Agricultural Preservation (AP) Districts

Farmland owners wishing to form a Working Agricultural Preservation District would have additional incentives that are not available to farmland owners participating as individuals. The incentives available to these participants would be greater in the twenty (20) year term than the fifteen (15) year term and the fifteen (15) year term incentives would be greater than the ten (10) year term incentives. For the incentives and their availability as they relate to the time period of the agreement, see chart "A".

Farmland owners can form working Agricultural Preservation Districts in one of the following ways:

- a. As a portion of or the entire areas in a State identified Agricultural Preservation District, or
- b. As an enlargement (contiguous) to the State identified Agricultural Preservation District, or
- c. As an enlargement (contiguous) to the working Agricultural Preservation District, or
- d. In an area that was not designated as a State identified Agricultural Preservation District.

These working Agricultural Preservation Districts would be required to meet at least the following conditions:

- a. Minimum acreage (500);
- b. All owners in Working Agricultural Preservation Districts would have the same term agreement, (length of term is decision of farmland owners); and;
- c. Minimum individual parcel size of ten (10) acres.

INDIVIDUAL AGREEMENT PARTICIPATION

Individual farmland owners (statewide) may voluntarily enter into the farmland Preservation Program independently of others. Their individual participation would be through a formal agreement the same as a group of Farmland owners wishing to participate as a Working Agricultural Preservation District, but with fewer incentives. The incentives available to these participants would be greater in the twenty (20) year term than the fifteen (15) year term and the fifteen (15) year term incentives would be greater than the ten (10) year term incentives. For the incentives and their availability as they relate to the time period of the agreement, see chart "A".

AGREEMENTS (Terms and Conditions)

All agreements that are entered into in the Farmland Preservation Program with farmland owners should:

- follow the land. If sold or transferred in whole or in part to someone else, the buyer, group, or person will also be subject to the provisions of the agreement;
- have a Soil Conservation Service Farm Conservation Plan recorded or be accompanied by a request that a plan be prepared by Soil Conservation Service;
- require that the property proposed for entry into the program would have been in farm production for the past three years, unless land is newly cleared and/or newly drained on an already operational farm;
- require most of the property under agreement in this program to be in continuous farm production for the term of the Agreement (i.e., discourages land being allowed to revert to brush or unmanaged forest during the term);
- allow the farmland owner to add additional conditions or terms to the agreement, if the owner and the state both agree, and the conditions are necessary to preserve the land for agricultural use; and
- allow a farmland owner (if he wishes) to terminate the agreement before the expiration of the agreement; however, he must have the approval of the State Farmland Preservation Board. The Board can approve termination only if either:
 - a. the agreement makes the land uneconomic to farm. An opportunity to develop the land is not, by itself a reason to terminate the agreement;
 - b. the land has changed in some way and cannot be farmed;
 - c. surrounding conditions make agricultural use of land uneconomic;

- d. the owner or member of his family has suffered a catastrophic illness such that the equity represented by the farm must be converted for medical uses; or
- e. if for other reasons the Board deems reasonable and justifiable, an owner may be released from the agreement.

Penalties

The penalty for termination of the agreement prior to expiration should be as follows:

- Owner must pay back all benefits received from program, plus annual interest from the time benefit was received; and
- Owner must pay the State of Delaware 50 percent of the value of the benefits that would have been received on the unexpired term of the agreement which would be based on the average annual benefit received during the time that the farmland owner was under the agreement.
- Penalties may be waived in whole or in part for extenuating circumstances as determined by the Board.

If the farmland owner breaks the agreement, the owner can be sued for "actual damages" which would be estimated by the court, but the damages awarded cannot be more than twice the value of the land when the owner entered the agreement. The court also could issue an injunction, a statement which would require the owner to follow the terms of the agreement.

LIMITED PURCHASE OF DEVELOPMENT RIGHTS

- Would apply in all working agricultural preservation districts, to preserve the integrity of districts when necessary. It would be used only when key farms under a preservation agreement would otherwise be converted to non-farm use and substantially harm the integrity of the districts. It would be implemented by the State lead agency.
- Would apply only to situations where a farm owner receives an offer of a sale price of non-farm use, proven by a conditional sales agreement, which exceeds the average Delaware farm real estate value per acre by 50 percent or more. The average Delaware farm real estate value per acre would come from the most recent U.S. Department of Agriculture data (issued at least twice yearly) and pertains to the value of farmland sold for agricultural use. The average Delaware farm real estate value per acre as of February 1980 was \$2,018, hence today development rights would be purchased only when a conditional sales agreement for non-farm use stipulates a sale price of \$3,027 or more per acre.

Farmland sold even for agricultural use sells in a range above and below the average. The 50 percent differential is chosen to get sufficiently outside the normal range of agricultural use transactions. Within this range farmers effectively compete against development pressures for available land without the necessity of State purchase of development rights to protect farmland.

- Would require that the farm owner provide the State lead agency with a conditional sales agreement from a buyer who intends non-farm use of the land. Such agreement would consummate the sale automatically, and the land would be released from the Working Agricultural Preservation District, unless the State purchased the development rights within 90 days. The State thus is given the "right of first refusal", and any farm owner in the Working Agricultural Preservation District whose farm is pending sale for non-farm use must submit the pending sale for review by the State lead agency.

A criminal penalty would be imposed on a farm owner who fraudulently provides a false conditional sales agreement.

At present an estimated average of 20,000 acres of Delaware farmland is sold yearly for all uses. Approximately 10-15 percent of farmland acreage sold, based on studies in the Northeast, is intended for non-farm use within five years. Assuming a high of 15 percent, and assuming that 50 percent of Delaware farmland is in Agricultural Preservation Districts, about 1,500 acres of District Farmland might be sold yearly at prices substantially above agricultural value. The difference today between likely average non-farm value per acre (\$5,000) and the value of farm real estate (which exceeds the average Delaware farm real estate value by 50%) per acre (\$3,027) would equal the value of development rights per acre (approximately \$2,000). Assuming development right to be a maximum of 1500 acres yearly have to be purchased at \$2,000 per acre, this feature could cost a maximum of \$3 million yearly.

- The \$3 million annual cost would be somewhat less, because not all of the 1,500 acres intended for non-farm use are likely to sell for at least 50 percent of the average farm real estate value.

- Purchased development rights may be reviewed after a 25-year period upon request of the then-current landowner. If profitable farming is found to be no longer feasible on the land, the then-current landowner would have first option to buy back the development rights at their then-current value. If the then-current landowner decides not to exercise this option, the State may sell the development rights to the highest bidder at public auction.

- The purchase-of-development rights feature could be financed by a State general fund appropriation each year or by a bond issue.

CHART A

TERM OF AGREEMENT	WORKING A. P. DISTRICTS AGREEMENTS			INDIVIDUAL AGREEMENTS			INCENTIVES
	20 year	15 year	10 year	20 year	15 year	10 year	
							1. Farmland owners should be exempted from general property tax, utility taxes or fees, school taxes, and all other service or district taxes or assessments* *(except to the extent that the farm residences and any accessory residents are treated in the same manner as nearby nonfarm residences) -- exempt 25 percent of the tax due -- exempt 50 percent of the tax due -- exempt 75 percent of the tax due -- exempt 100 percent of the tax due
							2. A farmland income tax relief program should be established, incorporating -- a state income tax credit (fixed amount) proportional to the acreage of farmland owned identified in the agreement. -- A state schedule of agricultural investment tax credits for major capital investments expenditures, similar to those for nonfarm industries -- Revised state schedule to allow accelerated depreciation for minor capital investments in farming.
							3. Limited Purchase of Development Rights.
							4. Delaware's Inheritance Tax System as it relates to farm estates should be revised. -- To include deferral and installment payments reasonably consistent with Federal Estate Tax provisions, but not to exceed the unexpired term in the agreement. -- To index the inheritance tax rate schedule so it would reflect the rate of increase in farmland prices in the State. -- Class A Farm Estate should be exempt -- Class A and B Farm Estate should be exempt -- Class A, B, and C Farm Estate should be exempt
							5. Real Property Transfer Tax should be revised if the farmland sold remains subject to an agreement, to -- Exempt 50 percent of tax due -- Exempt 100 percent of tax due
							6. Capital Gains Tax Schedules should be revised to allow -- Deferral of capital gains for farm sale and spreading of gain over an extended period of time, but not to exceed the unexpired term of agreement -- Exemption of 25 percent of the Capital Gains Tax Due -- Exemption of 50 percent of the Capital Gains Tax Due -- Exemption of 75 percent of the Capital Gains Tax Due -- Exemption of 100 percent of the Capital Gains Tax Due

APPENDIX A

STATE OF DELAWARE



EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER EIGHTY-FOUR

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES
RE: ESTABLISHMENT OF THE GOVERNOR'S ADVISORY COMMITTEE
ON FARMLAND PRESERVATION

WHEREAS, the Agricultural Industry is among those industries most significant to the economic welfare of the State of Delaware; and

WHEREAS, during the past quarter of a century the number of acres of Delaware land devoted to farming has dwindled from approximately 814,000 acres to 630,000 acres; and

WHEREAS, the continued loss of farmland, in Delaware and elsewhere, threatens our national economic and social interests; and

WHEREAS, a course of action designed to slow the loss of farmland should be settled upon only after those segments of the community most significantly affected have had the opportunity to study the problem and make proposals.

NOW, THEREFORE, I, PIERRE S. du PONT, IV, by the authority vested in me as Governor of the State of Delaware, do hereby declare and order as follows:

1. Establishment

The Governor's Advisory Committee on Farmland Preservation (the "Committee") is hereby established.

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CHIEF OFFICE

EXECUTIVE ORDER
NUMBER EIGHTY-FOUR

2. Membership

Members of the Committee shall be appointed by the Governor as follows:

- a. one representative of the Association for Preservation of Farmland,
- b. one representative of the Delaware Farm Bureau,
- c. one representative of the Delaware State Grange,
- d. one representative of the Delaware Council of Farm Organizations,
- e. one representative from the Agricultural Extension Service of the University of Delaware,
- f. the Chairpersons of the Committees on Agriculture of the Delaware State Senate and House of Representatives,
- g. one representative of the Real Estate industry
- h. one representative of the "Agri-business" industry,
- i. the Secretary of the Department of Agriculture, ex officio,
- j. the Director of the Office of Management, Budget and Planning, ex officio,
- k. four public members.

3. Chairman

The Chairman of the Committee shall be selected from its members by the Governor.

4. Duties

The Committee is hereby charged with the following duties and responsibilities:

- a. To gather such facts as it shall deem necessary in order to document the magnitude of the loss of farmland and to make reasonable projections of anticipated losses;
- b. To identify those farmland areas in Delaware where the potential for the loss of farmland is particularly acute;

EXECUTIVE ORDER
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- c. To identify the causes for the loss of farmland;
- d. To develop a statement estimating Delaware's need to preserve farmland and to quantify that need to the extent that available data makes such an estimate reasonably possible;
- e. To examine federal, state and local statutes or administrative rules and regulations affecting the loss of farmland;
- f. To propose legislative or administrative action designed to reduce the loss of Delaware's farmland and to estimate the fiscal impact, if any, of such proposals.

5. Committee Support

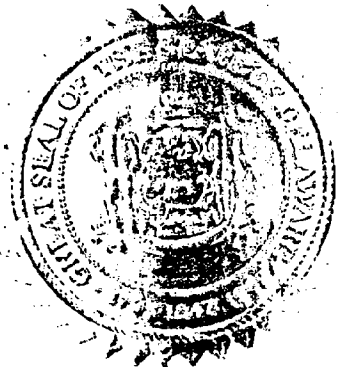
Such staff and facilities support as is deemed reasonably necessary and available by the Director of the Office of Management, Budget and Planning shall be provided to the Committee by the Office of Management, Budget and Planning in cooperation with the Department of Agriculture and other affected state agencies. In addition, the Director of the Office of Management, Budget and Planning shall advise the Committee whether, and to what extent, federal assistance may be available.

6. Committee Report

The Committee shall make its recommendations and proposals to the Governor no later than January 1, 1981.

7. Expiration

The provisions of this Executive Order shall expire on March 1, 1981.



APPROVED this 12th day of March, 1980.

R. S. Roark
Governor

ATTEST:

James D. Dancy
Acting Secretary of State

GOVERNOR'S ADVISORY COMMITTEE ON FARMLAND PRESERVATION

Membership List

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Council on Farm Organizations

Mr. Gerald F. Vaughn
Delaware Cooperative
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Delaware Cooperative
Extension Service
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Secretary of this Committee

The Honorable Thurman Adams
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The Honorable Tina Fallon
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Mrs. Robert A. Short
Trap Pond Road
Georgetown, DE 19947

Public Member
Sussex County

Mr. George V. Carey
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Milford, DE 19963

Public Member
Sussex County

The Committee has been supported by the extensive and valuable staff work of Stephen D. Corazza and David S. Hugg, III of the State Office of Management, Budget, and Planning, which is very much appreciated. Without their help this report could not have been completed as expeditiously.

* As of November 16, 1980, David S. Hugg, III has assumed the title of Acting Director of the Office of Management, Budget, and Planning.

Appendix B

University of Delaware Land Management Survey

One of the Committee's tasks is to determine specific areas of the State where loss of farmland is likely to occur. On the demand side, population and economic pressures that stimulate land development are greater in certain areas than in others. On the supply side, some areas have a more readily available supply of land and these areas may be those where concentrations of farmowners are not committed to a future of full-time commercial farming and are holding land in anticipation of development opportunities. There may be truth to the observation that "supply creates its own demand."

What do we know about the thinking of Delaware farmers with respect to selling their farmland for development? Each of us has some impressions based on personal knowledge of the attitudes, expectations, and financial goals of individual farmers in our acquaintance. But do any data exist that quantify these impressions and enable direct comparisons from one area of the state to another?

In 1979 a research project headed by Dr. Gerald Cole of the University of Delaware's College of Agricultural Sciences produced these kinds of data. Surveyed were 178 owners of family farms in Delaware.

The survey obtained many more data than those highlighted here. But for the Committee's purposes, these several findings seem most relevant, interesting, and helpful.

Findings are expressed as the percentage of each county's or the state's total family-owned farmland represented by the farms of respondents who answered in certain ways. For example, the first item that follows means that 93.1 percent of Delaware's total family-owned farmland is in the farms of respondents who strongly agreed, or agreed, that: "Our better farm land should be preserved for agriculture."

The next few statements drew responses generally favorable to farmland preservation:

Our better farmland should be preserved for agriculture.

Strongly agreed, or agreed

<u>DE</u>	<u>NC</u>	<u>K</u>	<u>S</u>
93.1	95.7	92.2	92.9

Landowners have a moral obligation to conserve the land for future generations.

Strongly agreed, or agreed

<u>DE</u>	<u>NC</u>	<u>K</u>	<u>S</u>
90.5	73.4	96.5	91.8

Development should be restricted to land which is not well suited for agriculture.

Strongly agreed, or agreed

<u>DE</u>	<u>NC</u>	<u>K</u>	<u>S</u>
78.9	69.1	90.4	68.1

Importance of full time commercial farming as a reason you own land.

Answering very important

<u>DE</u>	<u>NC</u>	<u>K</u>	<u>S</u>
81.6	79.1	80.5	84.4

People who strongly agreed, or agreed, with the foregoing statements would be expected; therefore, to strongly disagree, or disagree, with opposing statements. However, opposing statements such as the following drew less disagreement than expected:

Land use should be permitted to change to its highest and best use, i.e., most profitable use.

Strongly disagreed, or disagreed

<u>DE</u>	<u>NC</u>	<u>K</u>	<u>S</u>
45.6	47.6	49.0	39.8

Landowners should be allowed to use their land any way they wish to use it.

Strongly disagreed, or disagreed

<u>DE</u>	<u>NC</u>	<u>K</u>	<u>S</u>
34.0	38.4	18.8	53.2

Moreover there is no substantial majority for discouraging speculation in land values:

Profits from land speculation should be taxed at a higher rate than they are currently.

Strongly agreed, or agreed

<u>DE</u>	<u>NC</u>	<u>K</u>	<u>S</u>
55.0	51.7	57.2	53.7

What then is the likelihood that Delaware farmowners will be selling their farmland for development? This is the "bottom line" and the next two statements suggest that at least in New Castle County the prospect for land shifting out of farming is considerable even in the next five years. Of course with current economic conditions, developers' actions may not coincide with farmowners' expectations, in New Castle County or anywhere.

Do you expect the land to be sold in the next five (5) years?

Answering no

<u>DE</u>	<u>NC</u>	<u>K</u>	<u>S</u>
90.0	79.8	93.8	90.4

(This means sold for any purpose including farming and not necessarily for development. Also entire parcels or only portions of parcels may be sold.).

What do you predict the future use will be (within the next five years)?

An answer other than farming

<u>DE</u>	<u>NC</u>	<u>K</u>	<u>S</u>
10.2	18.5	5.1	12.8

One of the key factors that increase the likelihood of farm sale is age of the owner. The land management survey showed the average age of farmland owners to be 57.3 years in New Castle, 56.2 in Sussex, 53.6 in Kent, and 55.4 in the entire State. In New Castle County 40% of the family-owned farmland is owned by people aged 55 years and older. In Sussex County the figure is an even larger 53%. In Kent County it is only 31%, and the average is 40% for the entire State.

New Castle and Sussex Counties, therefore, can be expected to have the highest rates of farm sale. But the prospect of selling a farm for urban development, rather than for continued farming, is greater in urban New Castle County than in rural Sussex.

APPENDIX C

STATE PROGRAMS FOR PRESERVATION OF FARMLAND BY TYPE OF PROGRAM*

	Preferential property tax assessment	Preferential property tax assessment with deferred taxation	Preferential taxation with restrictive agreement	Circuit breaker income tax credits	Inheritance and estate taxation	Land gains taxation	Agricultural districts	Agricultural zoning	Purchase of development rights	Transfer of development rights	Land use commissions	Land Banking
ALABAMA	s											
ALASKA	s											
ARIZONA	s							b	s			
ARKANSAS	s											
CALIFORNIA		s			b		b					
COLORADO	s											
CONNECTICUT	s			s				s				
DELAWARE	s											
FLORIDA	s											
GEORGIA												
HAWAII		s					s	b		s	s	
IDAHO	s											
ILLINOIS	s				b							
INDIANA	s											
IOWA	s									s		
KANSAS	s			s								
KENTUCKY	s			s								
LOUISIANA	s											
MAINE	s											
MARYLAND	s, b							s	b			
MASSACHUSETTS	s							s			s	
MICHIGAN		s	s	s								
MINNESOTA	s	b	b									
MISSISSIPPI												
MISSOURI	s											
MONTANA	s				b							
NEBRASKA	s											
NEVADA	s											
NEW HAMPSHIRE		s						b				
NEW JERSEY	s							s, b	b			
NEW MEXICO	s											
NEW YORK	s			s		s			b			
NORTH CAROLINA	s											
NORTH DAKOTA	s		b									
OHIO	s					b						
OKLAHOMA	s											
OREGON	s				b		s			s		
PENNSYLVANIA	s	s				b					s	
RHODE ISLAND	s											
SOUTH CAROLINA	s											
SOUTH DAKOTA	s											
TENNESSEE	s			s							s	
TEXAS	s											
UTAH	s											
VERMONT	s				s							
VIRGINIA	s				b	s		b				
WASHINGTON	s, b				b							
WEST VIRGINIA	s											
WISCONSIN		s	s				s					
WYOMING	s											

s - statute or program
b - bill

SOURCE: A Survey of State Programs to Preserve Farmland; National Conference of State Legislatures/CEQ, April, 1979.

Appendix D

Fiscal Impact of Recommendations

The Advisory Committee on Farmland Preservation's charge includes estimation of the fiscal impacts of legislative or administrative actions intended to reduce the loss of farmland. The Committee has promulgated 17 recommendations including a variety of tax incentives to encourage farmland preservation. Some of these recommendations have short-term or continuing costs on various units of government which can be broadly estimated using data from the U. S. Department of Agriculture and other sources even if the full extent of participation is unknown.

Policy Recommendations:

The report includes four recommendations for policy to be established by legislative action. By themselves these recommendations have no measurable fiscal impact, although their achievement through the implementation of the remainder of the proposed program will result in maintenance of a viable agricultural component in the State's economy.

Program Recommendations:

Thirteen program recommendations are included in the proposed farmland preservation package. Of these, numbers 1, 2, 3, 10 and 12 are primarily staff functions at the State and, to a lesser degree, county levels. Most can be accommodated by existing staffs at OMBP or the Department of Agriculture. Recommendation 3 provides for a new data collection responsibility for both OMBP and the counties. Initial establishment of the data base could cost upwards of \$50,000, although continuing maintenance costs would be minimal.

Recommendations 4 through 9 constitute the mandatory program as originally recommended by the Committee. If implemented as originally proposed, this package would cost approximately \$5,100,000 annually. (Due to public concern over the mandatory approach, the Committee decided to recommend a voluntary program at this time. The costs for this program are described later in this appendix).

Recommendation 4 called for the establishment of exclusive agricultural zones with associated analysis, informational workshops, mapping, hearings and monitoring requirements. Regardless of the level of government at which these steps are performed, these actions mandate a staff of at least 2-3 people with an initial cost of approximately \$50,000 - \$60,000.

Recommendation 5 called for exemption of farmlands in exclusive agricultural zones from school, property, utility and other taxes and assessments (but not the farm or associated residences). Based on USDA data (1978), total farm real estate tax revenues in Delaware do not exceed \$2,000,000. This includes both land and all improvements for all lands taxed as farm or agricultural uses. Assuming that improvements constitute a major portion of the taxable unit and that perhaps 100,000 of the 672,000 acres of farmland (1978 base) would not be in exclusive agricultural zones the impact of this recommendation statewide is estimated at \$1,000,000 - \$1,200,000 annually.

These impacts would not be spread uniformly since the proportion of farmland included in the gross assessed value, averaging 8% statewide, varies from 4% in New Castle to 16% in Kent to 26% in Sussex. Procedures to minimize the impact, as recommended by the Committee, should reflect this variation in potential impact.

Recommendation 6 provided for deferrals and installment payments of State inheritance taxes. While exact figures on impact are not readily available, the expected loss in State revenues should not exceed \$100,000 per year.

Recommendations 7 and 9 provided income tax credits tied to the acreage a farm owner has in either the exclusive agricultural zone or in the preservation program by contract. Assuming a credit of \$5 per acre an average Delaware farmer would receive a credit of approximately \$1,000. If every acre of farmland in the State were in the program, income tax credits would amount to approximately \$3,400,000. It is unlikely that more than 80-85% of all lands would be included or that full credits would be taken each year by every participating owner. Accordingly, the expected cost of this factor is \$3,000,000 per year (about one half of one percent of total State revenues).

Recommendation 8 provided for changes in capital gains tax schedules and in property transfer taxes. Computation of this recommendation's impact on that portion of State revenue which is attributable to capital gains taxes is difficult. However, the impact is a function of the number of farm sales per year and the increase in farm values. In recent years farm sales averaged 91 per year from a high of 168 in 1977 to a low of 46 in 1979. Using the change in per acre values between 1950 and 1978 and the effective State tax rate on an "average" sale, the impact would be about \$635,000 per year.

The impact of certain transfer tax rate or schedule changes can be estimated from the average value of farm sales in the past four years. In the four years ending in February, 1980, the average value of farms sold was \$335,000. In the same period the number of sales averaged 91, resulting in an average gross sale value of \$30,485,000. The State's 2% transfer tax would have generated approximately \$610,000 in revenues. Reducing the rate to 1% for transfers of farms in the preservation program would reduce State transfer tax revenues by about \$305,000.

Recommendation 11 calls for changes in the assessment practices of the counties to cause reassessment of property to its zoned and/or subdivided potential as soon as either action takes place, regardless of present use.

Vacant platted residential lots (33,349 lots in 1976) exist in all three counties, many presently in agricultural use and assessed as farmland or vacant land. According to a recent report of the U. S. Census of Governments, such parcels are assessed as a ratio of sale price at 17.9% (i.e., assessed value as a percent of recent sale values), and have an assessed value of \$108,000,000. At an average tax rate of \$2 per \$100 of assessed value these parcels generate about \$2,160,000 in local tax revenues (property and school). If the assessment to sales ratio were raised through reassessment to match that of single family residences, 34.8%, the net effect would be an increase in assessed value by a factor of 1.94 to \$210,000,000. This would generate a local annual tax revenue potential of \$4,200,000; an increase of \$2,040,000. This would offset, by a factor of 2, the lost revenue from the farmland exemptions proposed in program recommendation 5.

The bulk of these lots are in Kent and Sussex Counties while the bulk of the current assessed value (\$86 million of the \$108 million) is in New Castle County. This suggests that the reassessment based on zoning and/or subdivision status would benefit the more rural counties which are the most impacted by other proposals. It should be noted that some of these lots involve lands which may be included in exclusive agricultural zones which would reduce the benefit of these reassessments, the counties would incur costs (perhaps less than \$100,000 in aggregate) for the reassessment, the ratios of assessment to sales for lots and residences and tax rates vary among counties and school districts thereby distorting the costs and benefits on a local basis, and the \$2 per \$100 tax rate is above the present \$1.50 - \$1.75 effective rates in Kent and Sussex Counties.

Recommendation 13 calls for establishment of a voluntary farmland preservation program. The amount of farmland that may be enrolled in the proposed voluntary program is very difficult to predict. Experience with voluntary programs in other states suggests Delaware can anticipate 20-40% enrollment within 10 years, and New York State achieved over 60% enrollment. It seems safe to assume, however, that the Delaware acreage would be less than that involved under mandatory exclusive agricultural zoning. The fiscal impacts based on acreage level therefore would be lower under the voluntary program than those estimated under mandatory exclusive agricultural zoning and much lower in the first several years.

The administrative cost of a voluntary program eventually may exceed that of mandatory exclusive agricultural zoning, because of the many agreements to be administered and kept current between the State and farm owners. Also the Limited Purchase-of-Development Rights feature adds a cost that could reach three million dollars yearly (in 1980 dollars) under the voluntary program, which was not included in the fiscal impacts of mandatory exclusive agricultural zoning as originally conceived. Finally, the voluntary program calls for up to 100 percent exemption from Delaware inheritance, real property transfer, and capital gains taxes in certain situations, which is a greater reduction in these tax rates than was contemplated under mandatory exclusive agricultural zoning. The revenue impacts remain relatively insignificant.

Summary of Fiscal Impacts*

	Estimated Cost/Lost Revenues	Potential Increased Revenues	Primarily Impacted Jurisdiction
Policy Recommendations			
1	Minimal	-	State
2	Minimal	-	State
3	Minimal	-	State
4	Minimal	-	State
Program Recommendations:			
1	Minimal	-	State
2	Minimal	-	State
3	\$50,000	-	State
4	\$60,000	-	State
5	\$1,000,000	-	Counties**
6	\$100,000	-	State
7 and 9 combined	\$3,000,000	-	State
8	\$940,000	-	State
10	Minimal	-	State
11	\$100,000	\$2,000,000	Counties**
12	Minimal	-	State
13	Minimal	-	State

(In early years, risen
to a maximum of approximately
\$8 million yearly after 10 yrs.)***

* These recommendations relate to the mandatory program originally proposed by the Committee. The Committee has decided not to pursue this approach at this time in favor of a voluntary program (Program Recommendation 13).

** Includes school districts.

***The maximum cost would consist of up to \$3 million for limited Purchase of Development Rights and up to \$5 million for the other program recommendations.

